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THE

FINAL EXAMINATION GUIDE TO BANKRUPTCY,

CONTAINING

A DIGEST OF THE PRINCIPAL EXAMINATION QUESTIONS, ALTERED, WHERE NECESSARY, TO MEET THE ACTS OF 1869,

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EDWARD HENSLOWE BEDFORD,

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Editor of "The Preliminary," "Intermediate," and "Final," and Author of "The Preliminary Digest," "The Guide to Preliminary Examinations for Solicitors," "The Preliminary Guide to Latin Grammar," "The Intermediate Examination Guide," "The Intermediate Examination Guide to Book-keeping," and "The Final Examination Guide to the Practice of the Supreme Court of Judicature," and to Bankruptcy, Probate and Divorce, &c., &c.

"LEGE NON MULTA SED MULTUM."

THIRD EDITION.

LONDON:
STEVENS & SONS, 119, CHANCERY LANE,
Law Booksellers and Publishers.
1877.

LONDON:
PRINTED BY WILLIAM CLOWES AND SONS, STAMFORD STREET
AND CHARING CROSS.

PREFACE TO THE THIRD EDITION.

As there does not seem to be the smallest doubt entertained that the new Bankruptcy Act will pass early in the ensuing year, it was not my intention to have brought out another edition of my "Final Examination Guide to Bankruptcy" until that event took place; but on my return to town last month after my vacation, finding there was no guide to the Bankruptcy Act in print for the use of Candidates at the forthcoming Final Examination in November, I determined, at all hazards, to bring out the present edition. As my work has been necessarily hurried, I have no doubt that some errors will be discovered; but I trust, as Mr. Robson says in his preface to the splendid work on Bankruptcy he has given to the profession, "they may be neither very numerous or important;" and if, unfortunately, it should turn out that they are both, I must ask my readers, under the circumstances, to pass an "*extraordinary resolution*" in favour of my humble attempts to assist them to answer their questions in the Bankruptcy Papers of November next.

E. H. B.

9 King's Bench Walk, Temple.
October, 1877.

PREFACE TO THE FIRST EDITION.

DURING the five years that I have prepared Pupils for the various Law Examinations I have made it an *invariable rule* that my Candidates for the "Final" should offer themselves for examination in the *additional* subject of Bankruptcy, as I feel assured that the Examiners must necessarily look with a more favourable eye on the papers of those who voluntarily offer themselves for examination in an extra subject than on those of Candidates who simply confine themselves to the number of subjects absolutely necessary to ensure a pass.

This—coupled with another rule of mine, which is *personally to take each class daily*—I am convinced contributes much to the success which has hitherto attended those men who have put themselves under my guidance and tuition; and they are both rules to which I mean strictly to adhere.

The existing Bankruptcy Law having been almost entirely altered during the last Session necessarily calls for the little book I now offer to the public, and I trust it may be found of some slight assistance.

That it is full of faults I doubt not, but for its shortcomings

I would crave my readers' indulgence on the score that it has been written during the few spare hours that I have at my disposal in the evenings which follow a long day's coaching; and with this one excuse I leave in the hands of my readers my "Final Examination Guide to Bankruptcy."

E. H. B.

9 King's Bench Walk, Temple.
4th November, 1869.

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*** *The numbers refer to the questions.*

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PRELIMINARY, INTERMEDIATE,

AND

FINAL EXAMINATIONS.

Mr. E. H. BEDFORD, Editor of the "PRELIMINARY," "INTERMEDIATE," and "FINAL," has Classes Reading daily at his Chambers for all the above Examinations, and personally takes e ch Class every day, except Saturday.

"We have much pleasure in stating that the Clifford's Inn rizeman, in the last January Final Examination, was a Pupil of Mr. E. H. Bedford, of 9, King's Bench Walk, Temple. Two of Mr. Bedford's pupils took honours at the 'Final,' in Trinity Term, 1874: one pupil was honourably mentioned in Michaelmas Term, 1874, another took a prize in Hilary Term, 1875, another a certificate in Easter Term, 1875, and another a certificate in Trinity Sittings, 1876. The achievement of winning the 'blue ribbon' in the 'Final' has now crowned Mr. Bedford's efforts."—*The Law Journal*, March 17, 1877.

THE

FINAL EXAMINATION

GUIDE TO BANKRUPTCY.

I.—The Bankruptcy Law, 1869.

(1.) *What are the Acts of Parliament, now in force in England, providing for the distribution of the property of a debtor amongst his creditors, and for the punishment of fraud by a debtor?*

The Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), and the Debtors Act, 1869 (32 & 33 Vict. c. 62). The Acts relating to the old practice are all repealed by the Bankruptcy Repeal and Insolvent Court Act (32 & 33 Vict. c. 83), except as to matters pending before the commencement of the Act, viz., the 1st day of January, 1870.

(2.) *State the general object and policy of the Bankrupt Law.*

The Bankruptcy Law of 1869 aims at the equal division of the property of the debtor amongst his creditors as speedily and cheaply as possible, at the same time allowing this division to be conducted by the creditors themselves, either under the immediate supervision of the Court or by "liquidation by arrangement;" and a certain majority of the creditors may, if they think fit so to do, accept a debtor's proposal for payment of a composition without bankruptcy or liquidation. It aims at the

protection of creditors by compelling the bankrupt first to pay 10*s.* in the pound or obtain a special resolution of his creditors, in order to obtain his discharge. And, lastly, it aims at the punishment of fraudulent bankrupts or debtors, but otherwise the abolition of the general right of a creditor to arrest and imprison his debtor. (32 & 33 Vict. c. 71; 32 & 33 Vict. c. 62.)

(3.) *What is the principle on which the Bankruptcy Law is founded?*

For the protection of honest debtors, who have, by misfortune or the fault of others, fallen into pecuniary difficulties; for benefit of creditors by the equal division of the property of the debtor amongst them as speedily and cheaply as possible; and the punishment of fraudulent bankrupts or debtors by imprisonment. (See also Robson's Bankruptcy, 3rd ed., 1.)

(4.) *Define the meaning and state the object of acts of bankruptcy.*

The term bankruptcy is derived from *bancus*, a table or counter of a tradesman, and *ruptus*, broken, denoting thereby one whose shop or place of trade is broken or gone. One of the main objects of the Bankruptcy Law is the seizure of the remaining property of the bankrupt for the purposes of distribution amongst the creditors without allowing him to squander it or appropriate it in paying particular creditors to the prejudice of others. It is, therefore, of great importance that an insolvent debtor should be brought under the operation of the law as soon as possible after his affairs become embarrassed, and for this reason certain acts have been prescribed as the *indicia* of insolvency. These acts are called acts of bankruptcy, and no person can be made a bankrupt who has not committed one of such acts. (Robson's Bankruptcy, 3rd ed., 108.)

(5.) *Mention two or three instances in which you would recommend an immediate resort to proceedings in bankruptcy.*

(i) Where the debtor is so hopelessly involved that if bank-

ruptcy proceedings are not at once resorted to, there will be no estate left for division amongst the creditors.

(ii.) If a debtor really seriously involved continues speculating, and thereby deceiving and almost defrauding creditors of their just demands.

(iii.) Also in order to rescue an honest man from misfortune and pressure by giving him a free discharge after payment of the usual dividend, and thereby enabling him to commence his trade afresh.

(6.) *Point out some of the principal changes that are made in the bankruptcy law by the Bankruptcy Act of* 1869.

(i.) The substitution of a London Court with one Chief Judge and four Registrars, and the transfer of the bankruptcy jurisdiction in the country districts to the County Courts.

(ii.) The abolition of commissioners, an official assignee and messenger, and the appointment by the creditors of a trustee, in the place of a creditors' assignee, who is to collect the assets, and the committee of inspection to superintend the proceedings.

(iii.) The abolition of the debtor's petition for adjudication.

(iv.) The abolition of privilege of Parliament.

(v.) The abolition of the judgment summons and the extension of the debtor summons to non-traders.

(vi.) The suspension of the order of discharge until the bankrupt has paid 10*s.* in the pound, unless the creditors pass a resolution that his misfortune was involuntarily incurred.

(vii.) Where no discharge is granted debts provable under the bankruptcy are not to be enforced until after *three years* from the close of the bankruptcy.

(viii.) The introduction of the process "Liquidation by Arrangement" for the purpose of winding up the affairs of the debtor, and the alteration of the practice in cases of composition.

(ix.) All imprisonment for debt is to be abolished, subject nevertheless to cases of fraud, &c., and the Debtors Act of 32 &

33 Vict. c. 62. By the latter Act the power of the county court judges of imprisoning debtors who have the means, and refuse to pay their creditors, is extended to the superior Courts in cases where the debt is above 50*l.*

II.—Constitution, Jurisdiction and Powers of Court and Officers.

(7.) *Can a trader now make himself a bankrupt, and how?*

Since the Act of 1869, a trader cannot file a petition for an adjudication of bankruptcy against himself.

(8.) *How is the Court of Bankruptcy constituted?*

It is composed of the *London District* and the *County District.*

The *London Bankruptcy District* comprises the City of London and its Liberties and all places which are situated within the Metropolitan County Court Districts.

The *County* or *Local Bankruptcy Court* is the *County Court* of the district in which the bankrupt resides or carries on business, not residing or carrying on his business within the London Bankruptcy District (ss. 59, 60).

(9.) *Name the officers of the Court of Bankruptcy in London.*

The London Court consists of the Chief Judge in Bankruptcy, not more than four Registrars; Clerks, Ushers and other subordinate officers (s. 61); and a Comptroller (s. 55).

(10.) *State shortly the jurisdiction of the Chief Judge of the London of Court of Bankruptcy.*

The Court continues to be a Court of law and equity and a principal Court of record, and the Chief Judge shall have all the powers, jurisdiction and privileges of the Judges of the Common Law Divisions of the High Court, or a Judge of the Chancery Division, and the orders of such Judge are of the same force as if they were judgments or decrees. The Chief Judge may sit

in Chambers and have the same jurisdiction as if sitting in open Court (s. 65).

(11.) *State shortly the additional jurisdiction of County Court Judges, conferred by the Act of* 1869.

In addition to their ordinary powers as County Court Judges they have all the powers and jurisdiction of a Judge of the Court of Chancery, and the orders of such Judge may be enforced accordingly in manner prescribed.

(12.) *Is there any and what appeal from the Courts of Bankruptcy?*

Any person aggrieved by any order of a *local* Bankruptcy Court in respect of any *matter of fact* or *of law* may appeal to the Chief Judge in Bankruptcy, and the orders of the Chief Judge in Bankruptcy, whether in respect of a matter brought before him on appeal or not, may be appealed against to the Court of Appeal in the Chancery Division, and with leave of that Court an appeal lies to the House of Lords (s. 71).

(13.) *By what Courts may the order of a County Court judge sitting in bankruptcy be reviewed? Has a party aggrieved a right of appeal to the House of Lords?*

An appeal from a County Court judge lies in the first instance to the Chief Judge in Bankruptcy, from thence to the Lords Justices (Court of Appeal in the Chancery Division of the High Court), and from thence, *by leave*, to the House of Lords, by petition. (39 & 40 Vict. c. 59, s. 71; see also 36 & 37 Vict. c. 66, s. 18.)

(14.) *Within what time and how is such appeal made?*

The appeal against the decision or order of the Chief Judge or a Judge of the County Court shall be entered with the Registrar of Appeals within and not later than twenty-one days from the decision or order, by leaving with him a copy of the appeal notice of motion. A copy of the appeal notice is forthwith sent by the

appellant to the registrar of the Court appealed from, who files the same with the proceedings, and a similar notice is delivered by the appellant to each respondent four days before the day on which he intends to move. At or before the time of entering the appeal the appellant deposits with the Registrar of Appeals such sum not less than 10*l.* and not exceeding 40*l.*, as the Court appealed from shall direct, to satisfy any costs that the appellant may be called upon to pay, and in the absence of any direction the sum deposited shall be 20*l.* The appeal is to be brought on by motion, and no new evidence is admissible unless the Court of Appeal so directs, but the parties shall be at liberty to bring before the Court of Appeal by affidavit the circumstance under which the order appealed against was made. The affidavit is filed with the Registrar of Appeals, and a copy sent by the appellant to the respondent four clear days before the hearing (rules 143–148). And it has been held that the time for appealing is to be computed from the date of the order appealed against, and not from the time when it was drawn up. (*Ex parte Hinton, in re Hinton*, L. R. 19 Eq. 266.) Sundays are not to be reckoned in the twenty-one days. (*Ex parte Hicks, in re Ball*, L. R. 20 Eq. 143.)

(15.) *State shortly the general powers of the Bankruptcy Courts.*

They have full power to decide *all questions of priorities* and all other questions whatsoever, whether of *law or fact*, which the Court may deem expedient to decide, for the purpose of doing complete justice, or making a complete distribution of property in any case, and they shall not be subject to restraint in the execution of their powers by the order of any other Court, nor shall any appeal lie from their decisions, except in the manner directed by this Act, and every Court may direct that *questions of fact* may be tried before a jury, if the parties desire it and such Court thinks fit, and such trial will be had in the London Court of Bankruptcy in the same manner as if it were a trial of an issue in one of the Courts of the Common Law Division, and in the County Court in the manner in which jury trials in ordinary cases are

by law held in such Courts (s. 72). (See also *ex parte Gillebrand, in re Sidebotham*, L. R. 10 Chan. App. 52.)

(16.) *How can proceedings in bankruptcy or copies of the proceedings be made evidence?*

The minutes of all resolutions and proceedings at meetings of creditors under this Act, if purporting to be signed by the chairman, shall be receivable as evidence in all legal proceedings (s. 106). Any petition, or copy of a petition, any order, or copy of an order, any certificate, or copy of a certificate, made by any Court having jurisdiction in bankruptcy, any deed, or copy of a deed of arrangement in bankruptcy, and any other instrument, or copy of an instrument, affidavit or document, made or used in the course of any bankruptcy proceedings or other proceedings had under this Act, may, if sealed with a seal of the Court, or signed by any Judge having jurisdiction in bankruptcy, be receivable in evidence (s. 107).

In the case of the death of the bankrupt or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, or a copy thereof, purporting to be sealed with the seal of the Court, shall be receivable in evidence of the matters therein deposed to.

Judicial notice is to be taken of the seal of every Court having jurisdiction in bankruptcy, and the signature of the Judge or Registrar in all legal proceedings (s. 109).

(17.) *State the several modes in which evidence is taken in the Court of Bankruptcy; who is authorized to administer oaths, and in case of conflict of testimony, how is the matter tried?*

By rule 49, the Court may in any matter take the whole or any part of the evidence, either *vivâ voce*, or by interrogatories, or upon affidavit, or by commission abroad, and by rule 157 an oath may be administered in the United Kingdom before a Court having jurisdiction in Bankruptcy or a Judge thereof or an

officer thereof authorized to administer oaths in that Court, or before a person authorized to administer oaths in that Court, or before a person authorized to administer oaths in any of the Divisions of the High Court, or before a justice of the peace for the county or place where it is sworn or made, and in the case of proof of debts before the trustee of the property of the bankrupt. By sect. 72 of the Act, the matter may be tried by the Court, or direct a question of fact to be tried by the Court with or without a jury in the same way in which issues in the Common Law Divisions are tried.

(18). *Describe shortly the duties of the Registrar.*

To make adjudications, to preside at first meetings, to receive proofs and act as trustee until one is appointed, to take minutes of the proceedings, to inquire into and register the resolution and statements of debts and assets under a composition and liquidation by arrangement, and to dispose of various matters of minor importance, and to make his returns to the Comptroller in Bankruptcy of the business in his Court.

(19). *Shortly describe the duties of the Comptroller.*

The Comptroller keeps a book entitled "The Register of Bankruptcies in the London Court," according to the form in the schedule, and another entitled "The Register of Bankruptcies in the County Courts," according to the form in the schedule, with such additional headings as he may find necessary. He causes entries to be made in the proper register of every gazetted notice applicable or defined by the headings, and such registers to be examined on every Monday and Thursday with the then last published "Gazette," so as to ensure that all the notices published therein shall have been duly entered in such registers (rules 237, 238). He receives and examines the trustee's quarterly statements of account after having been audited and certified by the committee of inspection. He calls the trustee to account for any misfeazance, &c., in such accounts, requiring

the trustee to make good any loss occasioned thereby, and he reports the trustee's conduct to the Court, failing to comply with such requisition (s. 57). As to the Comptroller's report to the County Court of the failure of the trustee to comply with his requisition, see rule 9 (1871). And the Comptroller may also at any time require any trustee to answer any inquiry made by him in relation to the bankruptcy, and may also apply to the Court to examine such trustee on oath, or any other person concerning such bankruptcy, and may direct a local investigation to be made of the books and vouchers of the trustee (s. 58), see also rule 251. And after the Registrars and other officers of the Court have made returns of the business in the various Courts and offices, the Comptroller frames books from extracts transmitted to him by the Registrars from books kept by them under rule 240, which shall be open for public information and searches, and also a general annual report to the Lord Chancellor repecting all matters within the Act, which reports shall be laid before both Houses of Parliament; and to dispose of various other matters with reference to the accounts and statements of the trustee (s. 115).

(20.) *Has any alteration been made since the making of the Bankruptcy Rules*, 1870, *in the scale of attorney's costs in bankruptcy or liquidation; and if so, what?*

Yes; where in any bankruptcy or liquidation the provable debts of the debtor do not exceed 750*l.*, or the estimated assets 200*l.*, attorneys are to be allowed three-fifths only of the charges ordinarily allowed, to which disbursements are to be added (rule 8, 1871).

III.—Persons liable to be made Bankrupt.

(21). *What persons are liable to be made bankrupt?*

All persons, *traders or non-traders*, or having privilege of Parliament (except a *partnership, association*, or a *company corporate* or registered under the Companies Act of 1862), (s. 6).

(22). *What are the provisions regarding persons having privilege of Parliament under the present Bankruptcy Act?*

In the event of committing an act of bankruptcy he may be dealt with in like manner as if he had no such privilege (s. 120).

And if a *member of the House of Commons*, he will be incapable of sitting or voting in the House during *one year* from the date of the order of his adjudication unless within that time the adjudication is annulled, or the creditors who prove debts are fully paid or satisfied (s. 121).

And further, if within such year the adjudication is not annulled or the debts are not fully satisfied, the Court shall, after the expiration of such time, certify the same to the Speaker of the House of Commons, and thereupon the seat of such member shall become vacant (s. 122).

(23.) *What (if any) is the effect of bankruptcy, or arrangement or composition with creditors, under the Bankruptcy Act of* 1869, *upon a person being one of her Majesty's justices of the peace?*

He becomes and remains incapable of acting as a justice of the peace until he has been newly assigned by her Majesty. (Debtors Act, 1869, s. 22.)

(24.) *Who are traders within the meaning of the new Act?*

Traders shall, for the purposes of this Act, mean the several persons in that behalf mentioned in the first schedule to this Act annexed, and are as follows:—alum makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cow keepers, dyers, fullers, keepers of inns, taverns, hotels or coffee houses, lime burners, livery-stable keepers, market gardeners, millers, packers, printers, *sharebrokers*, shipowners, shipwrights, *stockbrokers*, *stockjobbers*, victuallers, warehousemen,

wharfingers, persons using the trade or profession of a scrivener receiving other men's moneys or estates into their trust or custody, persons insuring ships or their freight against the perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment or otherwise, in gross or by retail, persons who, either for themselves or as agents or factors for others, seek their living by buying or selling, or buying and letting for hire goods or commodities, or by the workmanship or conversion of goods or commodities (s. 4). (But see Robson's Bankruptcy, 3rd ed., 99–108, and the cases there cited.)

(25.) *Specify the several persons who are particularly exempted from the definition of the term trader under the Bankruptcy Act*, 1869.

A farmer, grazier, common labourer, or workman for hire, a member of any partnership, association, or company, which cannot be adjudged bankrupt under the Act. (See Robson's Bankruptcy, *ibid.*)

(26.) *Are stockbrokers, farmers, and graziers liable to be made bankrupts as traders or non-traders?*

The term *traders* for the purpose of the Bankruptcy Act, 1869, includes stockbrokers. Farmers and graziers are not deemed traders for the purposes of the Act. (See Robson's Bankruptcy, *ibid.*)

(27.) *Under the recent statute what general distinction is made between traders and non-traders?*

To bring a person under the description of a trader for "buying and selling" there must be a purchasing and buying with the intention and object of selling, or in other words, there must be a selling for the purposes of profit or gaining a livelihood. There are also distinctions as to the acts of bankruptcy, as to the goods in the order and disposition of the bankrupt, as to seizure and

sale of his goods under an execution, and so as to voluntary settlements, and the time allowed under a debtor summons for payment or settlement.

(28.) *What constitutes a trading?*

See former part of last answer.

(29.) *What difference is there in the operation of the Bankruptcy Law as regards traders and non-traders?*

See latter part of answer to question 27.

(30.) *Is a married woman having the income of a fund secured to her for life for her separate use and without power of anticipation under any, and what, circumstances liable to be made a bankrupt, and can her life interest be made in any, and what, manner available for payment of her debts?*

No, she cannot, as she has no power of anticipating her income, and her life interest can only be made available in a Court of Equity for her ante-nuptial debts. (*Sanger* v. *Sanger*, L. R. 11 Eq. 476; see also *ex parte Holland, in re Heneage*, L. R. 9 Chan. App. 307. As to the liability generally of a married woman to be made bankrupt, see Robson's Bankruptcy, 3rd ed. 95.)

(31.) *Is an executor carrying on his testator's business, for the benefit of his testator's estate, liable to be made a bankrupt?*

An executor who carries on his testator's trade to a greater extent than is required to wind up his business, is liable to be adjudged a bankrupt as a trader. (*Ex parte Nutt*, 1 Atkins, 102; Robson's Bankruptcy, 3rd ed. 106.)

(32.) *Can a trader residing out of England be made a bankrupt under any circumstances? What would be the rule after a retirement from business?*

If a man has once traded in England, and coming over to England commits an act of bankruptcy here, he will be considered a trader under the bankruptcy law notwithstanding the fact of a

residence abroad (but see *ex parte Pascal, in re Myer*, 1 Chan. Div. 509, and *ex parte Crispin, in re Crispin*, L. R. 8 Chan. App. 374, as to foreigners domiciled abroad); and if a man has retired from business he is still liable to be treated as a trader in respect of debts contracted previous to his retirement. But it has been held that the Bankruptcy Act has not a retroactive effect and that a man cannot be made a trader unless he was a trader at the commencement of the act or became one subsequently. (*Ex parte Bailey*, L. R. 13 Eq. 314; and see also *ex parte Schomberg, in re Schomberg*, L. R. 10 Chan. App. 172, as to time of issue of trade debtor summons.)

(33.) *What is stoppage* in transitu, *and when may it be resorted to?*

The right of stoppage *in transitu* is a species of equitable lien, recognised and acted upon by the Common Law Courts for the purposes of substantial justice, and it may be resorted to in the event of the bankruptcy or insolvency of the vendee, after the vendor has parted with the possession of the goods, whilst they are *in transitu*. (*Lickbarrow* v. *Mason*, 2 T. R. 63; Smith's Merc. Law, 8th ed., p. 541 *et seq.*)

IV.—The Acts of Bankruptcy.

(34.) *Describe the various acts of bankruptcy, distinguishing those by a trader from those by a non-trader.*

The following are applicable to traders and non-traders:—

(i.) In England or elsewhere making a conveyance or assignment to trustees for the benefit of creditors generally.

(ii.) In England or elsewhere making a fraudulent conveyance, gift, delivery or transfer of property or any part thereof.

(iii). With intent to defeat or delay his creditors—departing out of England; being out of England remaining out of England, or beginning to keep house, or suffering himself to be outlawed.

(iv.) Filing declaration of insolvency.

(v.) Service of debtor summons for 50*l.* and neglect to pay, secure and compound for the same, in the case of a *trader* for *seven* days, and in the case of a *non-trader* for *three weeks* after service.

The following are applicable to traders only:—

(i.) Departing from his dwelling-house or otherwise absenting himself with intent to defeat and delay his creditors;

(ii.) Suffering an execution to be levied by seizure and sale for a debt not less than 50*l.*

(35.) *State in general terms the distinction between the Statute* 13 *Elizabeth, c.* 5, *and the present Bankruptcy Act with regard to fraudulent transfers.*

The Bankruptcy Act of 1869 contains a clause (viz., 91) making voluntary and other settlements by *a trader* void as against the trustee in bankruptcy, which would not necessarily be fraudulent within the statute 13 Eliz. c. 5. (Robson's Bankruptcy, 3rd ed., 123 *et seq.*) And with regard to 13 Eliz. c. 5, the settlement must not be made by a person in insolvent circumstances or with a view to insolvency, consequently it would be good if a settlor were in solvent circumstances at the time. Whereas the 91st section of the Act 1869 applies to traders if solvent, and not if bankrupt within two years thereof, and if bankrupt within ten years the onus of proving the solvency lies on the settlor.

(36.) *Is departing from his dwelling-house by a person who is not a trader, an act of bankruptcy?*

Departing from his dwelling-house or otherwise absenting himself, is not an act of bankruptcy in a person who is not a trader. (See also *ex parte Coates, in re Skelton,* 5 Chan. Div. C.A. 979.)

(37.) *Since the Bankruptcy Act of* 1869 *is a deed necessary to*

constitute a disposition of Real Estate or Personal Estate an act of bankruptcy?

It is not necessary, as by sect. 6 of the above Act any fraudulent gift, delivery, or transfer of the debtor's property, or any part thereof, is now an act of bankruptcy.

(38.) *Supposing a debtor to go abroad for a lawful purpose, will the lawfulness of the purpose in all cases prevent his departure from being an act of bankruptcy?*

It depends with what intention he departs from or remains out of England: the gist of the clause as to the departure from and remaining out of England to render such an act an act of bankruptcy, is the intention to defeat and delay the creditors; if he leave or remain away, knowing that delay will take place, it will be an act of bankruptcy in him, for a man is presumed to intend the necessary consequences of his own acts; and every day he remains away, he commits a fresh act of bankruptcy.

(39.) *Can an alien non-trader who is domiciled abroad, but who contracts debts in England, be made a bankrupt under the Bankruptcy Act of* 1869, *upon an alleged act of bankruptcy committed abroad?*

It was decided in the case of *ex parte Crispin, in re Crispin,* 8 Chan. App. 374, that this could not be done, but it would have been otherwise had he committed the act of bankruptcy in England. (See also *ex parte Pascal, in re Myer,* 1 Chan. Div. 509.)

(40.) *Explain the meaning of the term "Conveyance or assignment of his property;" and is it an act of bankruptcy?*

It would seem to include all assignments of property to trustees for the benefit of creditors either wholly or partially, provided the same incapacitate a debtor, being a trader, from carrying on his trade or (being a trader or not) such assignment has the effect of defeating and delaying creditors. If the assignment be for a pre-contracted debt under the above circumstances it will

be available as an act of bankruptcy if a petition for adjudication be presented within six months.

(41.) *By whom and on what grounds may an adjudication in Bankruptcy be obtained against a debtor?*

A single creditor or two or more creditors, if the amount of debts due from the debtor to him or them jointly, as the case may be, amount to a sum of not less than 50*l.* The adjudication must be made on one of the grounds stated in answer to question No. 34.

(42.) *Is an assignment by a trader of all his effects to secure a past debt and future advance necessarily and in all cases an act of bankruptcy?*

If a debtor convey the *whole* of his property as a security for or in payment of an antecedent debt it is an act of bankruptcy, whether he be a trader or non-trader (*In re Wood*, L. R. 7 Chan. App. 302); and the same rule holds good if there be no *substantial* exception from the assignment (*Ex parte Hawker, in re Keeley*, L. R. 7 Chan. App. 214.)

(43.) *To what extent, and under what circumstances, may a trader assign his effects as security for, or in payment of, an antecedent debt without committing an act of bankruptcy?*

See last answer.

(44.) *Is there any mode by which a creditor can compel his debtor either to pay or give security for the debt or commit an act of bankruptcy?*

A *debtor summons* may be granted by the Court on a creditor proving by affidavit to its satisfaction that a debt sufficient to support a petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt. The affidavit is filed and the summons lodged, together with two copies and three copies of demand expressed with reasonable certainty. The registrar

seals the particulars and files the original summons and seals and issues the copies to the creditor. The summons is to be in the prescribed form, resembling a writ of one of Her Majesty's Superior Courts. It is to state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him praying that he be adjudged bankrupt. The summons shall have an endorsement to the like effect, and the name and place of business of the attorney suing out the same, or in the event of no attorney being employed then that the same was sued out by the creditor in person; and in the event of such summons not being dismissed or such proceedings not being stayed, if the debtor, being a *trader*, has neglected to pay such sum or to secure such sum for the space of *seven days*, or not being a trader for the space of *three weeks*, he will be deemed to have committed an act of bankruptcy (s. 7, rules 18—21).

(45.) *What is a compulsory act of bankruptcy?*

Omitting to pay, compound for, &c., within the prescribed time, a sum due of an amount not less than 50*l.* on a debtor's summons served under sect. 7 of the Act.

(46.) *How must a debtor summons be served, and within what time from its date?*

Personally, by delivering a sealed copy to the debtor, and within twenty-one days from its date, unless the Court grant an extension of time, or permit substituted service respectively. (See also *ex parte Lancaster, in re Lancaster*, 3 Chan. Div. 498.)

(47.) *In case of an adjudication on a trader debtor summons will the fact of the trader having ceased to be a trader when the summons is served, affect the proceedings?*

It will vacate the proceedings because the debtor must be a

trader at the time the summons is served. (*Ex parte Schomberg, in re Schomberg,* L. R. 10 Chan. App. 172.)

(48.) *Explain the proceedings in relation to a debtor summons. If the debt is disputed, what steps should the alleged debtor take, and within what time should he do so, and what may thereupon be done by the Court?*

The creditor, on applying for a debtor summons, must file an affidavit of the truth of his debt, and lodge the summons, together with two copies and three copies of his particulars of demand. The registrar having sealed the same, service thereof is then effected on the debtor. If the debtor disputes the debt and desires to obtain the dismissal of the summons, he must file an affidavit with the registrar within seven days, if a trader, and three weeks, if a non-trader; stating he is not so indebted, or only in a less amount than 50*l.*, and thereupon the registrar will fix time and place for hearing an application for the dismissal of the summons, and give three days' notice thereof to the creditor and debtor. And the Court has power to dismiss the same either with or without costs, or to stay proceedings until after the trial on security being given for the debt and the costs (rules 22, 23).

(49.) *What is a debtor summons? what is necessary to obtain it? and why is it now so commonly used?*

It resembles as nearly as possible a writ issued by one of Her Majesty's Superior Courts, stating that in the event of the debtor failing to pay the sum specified, or to compound for the same, a petition may be presented against him. On an application for the summons the creditor must file an affidavit of the truth of his debt and lodge the summons, together with two copies and three copies of his particulars of demand. The registrar having sealed the same, service is then effected on the debtor. Its chief efficacy seems to consist in its cheapness and the pressure it puts on the debtor to prove that he is not indebted in the amount, and if he

is to pay or secure the same or commit an act of bankruptcy (sect. 7, rules 17–21).

(50.) *Can a person against whom a debtor summons is issued for a debt owing, but who has a counter claim against his creditor for damages for breach of a contract, use the counter claim in opposition to the summons?*

The creditor ought to deduct from the debt any sum due by him to his debtor arising out of the transaction on which *the demand is founded,* and where there are mutual accounts any clear set-off which he knows of must be deducted from the amount of his demand. (Yate Lee's Bankruptcy, 60, *in notis* and cases there cited.)

(51.) *Can a creditor recover the costs of a debtor summons when the debtor pays the claim before the summons is returnable?*

In a case mentioned in 14 Solicitors' Journal, 694, the registrar considered that there was not any jurisdiction to give costs to the creditor in a case where the debt was paid within time the limited by the summons. (See, however, rule 186; but where the debt was paid, *after* the time limited by the summons, the debtor was ordered to pay the costs: *Nixon* v. *Rigg,* 14 Sol. Jour. 298.)

(52.) *A person really indebted to another in a sum exceeding* 50*l. is served with a debtor summons, and does not pay, secure, or compound for the debt within the requisite time, but he makes an affidavit denying the debt, and obtains an order for stay of proceedings on giving security. Can a valid petition for adjudication, founded on default in payment of the debt mentioned in the summons, be presented pending the determination of the question of the existence of such debt?*

The debtor cannot be adjudged bankrupt on such a petition until after the hearing of the application (rule 41).

(53.) *Supposing the petitioning creditor to serve upon the debtor, being a trader, a debtor summons, requiring him to pay a sum due of an amount of not less than* 50*l.*, *within what time succeeding the service of such summons must the debtor pay such amount, or secure or compound for the same, in order to avoid an act of bankruptcy?*

Seven days.

(54). *After what lapse of time from the commission of the act of bankruptcy does a debtor cease to be liable to be made bankrupt for such act?*

No person is liable to be made bankrupt unless the act of bankruptcy on which the petition for adjudication is grounded has been committed *within six months* of the presentation of the petition (s. 6).

(55). *An adjudication being made, to what date shall it be deemed to have relation?*

It is to be deemed to have relation back to, and commence at, the time of the act of bankruptcy being completed on which the order of adjudication is made, or if more acts of bankruptcy than one have been committed, it is to have relation back to, and commence at, the time of the first of the acts of bankruptcy, proved to have been committed within twelve months next preceding the order of adjudication; but the bankruptcy is not to relate to any prior act of bankruptcy, unless at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and such debt or debts must be still remaining due at the time of adjudication (s. 11); and with regard to non-traders they are not to be adjudicated bankrupts in respect of debts contracted before the date of the passing of the Bankruptcy Act, 1861 (s. 118).

V.—Proceedings relating to the Petition for Adjudication.

The Petitioning Creditors.

(56). ***What must be the amount of the debt of a single petitioning creditor, or the aggregate amount of two or more creditors, to support a petition for adjudication?***

50*l.* (s. 6).

(57.) ***Three creditors, whose respective debts are under, but amount in the aggregate to more than*** 50*l.*, ***are desirous of making their debtor a bankrupt. Has the Act of*** 1869 ***made any, and, if so, what change in the law is this respect?***

Under the Bankruptcy Act, 1861, the debt of a single petitioning creditor, or of two or more persons being partners, was required to amount to 50*l.*, the debtor of two creditors to 70*l.*, and three or more to 100*l.* (s. 89). But since the Act of 1869 a single creditor, two or more creditors of the debt due to such single creditor, or the aggregate amount of debts due to such several creditors from any debtor amount to a sum of not less than 50*l.*, may present a petition to the Court praying that the debtor may be adjudged a bankrupt (s. 6.)

(58.) ***Is it, or not, necessary that a petitioning creditor's debt should be contracted before [the act of bankruptcy upon which the petition is founded?***

Before the act of bankruptcy. (*Ex parte Hayward*, L. R. 6 Chan. App. 546.)

(59.) ***A creditor, if the debt due to him is not less than*** 50*l*, ***may present a bankruptcy petition against his debtor*** (section 6). ***What is the precise meaning of the words "debt due" in this***

section? Have the same words any other meaning in other sections of the Act?

The debt must not only be a sum due, but must also be a debt presently *payable* (*Ex parte Sturt*, L. R. 13 Eq. 309). This case does not seem to apply to sects. 125 and 126, where a debt due will be sufficient (Robson's Bankruptcy, 3rd ed. 172–201).

(60.) *Can a creditor holding a security be a petitioning creditor? and can he vote on the choice of trustee?*

A creditor holding security may become a petitioning creditor if he states in his petition that he is ready to give up the security for the benefit of the creditors, in the event of the creditor being adjudicated a bankrupt, or on his willingness to give an estimate of the value of his security he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, but he must, on application made by the trustee within two months after the date of adjudication, give up his security to such trustee for the benefit of the creditors, upon the payment of such estimated value (s. 6: rule 117).

A secured creditor, unless he has realised his security, must assess its value before voting (rule 99).

(61.) *Is a creditor holding security from the debtor entitled to vote, or what course must he take to enable him to do so?*

Unless he has realised his security he must assess its value before voting (rule 99: see also 1869 Act, s. 40).

(62.) *What is the rule with regard to presenting a petition against partners?*

Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others (s. 100), and the Court may

dismiss the petition as to one without prejudice as to the others (s. 101).

(63). *What are the requisites to constitute a petitioning creditor's debt? May it be a secured debt? May it be an equitable debt? Must it be due, and may it sound in damages?*

It must amount to 50*l.* or upwards, and must be a liquidated sum, *due* in law or in equity, not secured, unless the petitioner state in his petition that he is ready to give up such security in the event of the debtor being adjudicated a bankrupt, or be willing to give an estimate of its value, in which latter case he may be admitted as a petitioning creditor, to the extent of the balance due to him, after deducting the value so estimated; but if required by the trustee, he must give up such security, at the estimated value, within two months (s. 6: rule 117).

Demands in the nature of unliquidated damages, arising otherwise than by reason of a contract or promise, are not provable (ss. 6, 31); and with regard to non-traders, they are not to be adjudicated bankrupts in respect of debts contracted before the date of the passing of the Bankruptcy Act, viz., the 6th of August, 1861 (s. 118).

(64). *In case the debt upon which the petitioning creditor relies is denied, does the Court of Bankruptcy in any, and what, cases deal with the question itself, or how does it proceed?*

The Court, upon such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law and the costs of establishing such debt, may stay all the proceedings on the petition for such time as may be required for trial of the question relating to such debt, and the trial is had in the same manner as is provided by sect. 7 of the Act as to disputed debts under debtor summonses (s. 9).

(65). *State briefly how adjudication of bankruptcy is obtained against a debtor.*

The power of a bankrupt to petition against himself has now been abolished, and the petition can only be presented at the instance of a creditor.

The petition is served on the debtor, and will not be taken *ex parte* as heretofore, and must be verified by affidavit. On the hearing the petitioning creditor must prove his debt, also the trading (if necessary) and the act of bankruptcy. If more than one act of bankruptcy is alleged in the petition, proof of some one is required. The Court, if satisfied with the proof, will adjudge the debtor a bankrupt (s. 8).

The debtor may appear on the petition and deny that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a bankruptcy petition against him: the Court, upon such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him, and of the costs of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the questions relating to such debt: and where proceedings are stayed the Court may adjudge the debtor, a bankrupt on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it thinks just, the petition, proceedings in which have been stayed as aforesaid (s. 9).

A copy of the order of the Court adjudging the debtor to be bankrupt shall be published in the *London Gazette*, and be advertised in one local paper. And the date of such order shall be the date of the adjudication for the purposes of the Act, and the production of a copy of the *Gazette* containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged a bankrupt, and of the date of the adjudication (s. 10: rule 45).

And after the presentation of a petition, the Court may restrain

further proceedings in any legal process against the debtor, or allow such proceedings to proceed upon such terms as it may think just, and may appoint a receiver or manager of the property or business of the debtor or any part of it; and on application of any creditor may direct immediate possession to be taken of such property (s. 13: see also rules 34–61).

(66). *Is any, and if any, what evidence required upon the hearing of a petition for adjudication in bankruptcy?*

See latter part of last answer.

(67). *If a creditor for* 60*l. holding security worth* 30*l. desires to make his debtor bankrupt, how must he proceed?*

It will be necessary for him to state in his petition that he is ready to give up the security in the event of the debtor being adjudicated a bankrupt, or be willing to give an estimate of its value, in which latter case he may be admitted as a petitioning creditor to the extent of the balance due to him after deducting the value so estimated, which in the above case would be 10*l.*

(68). *How is a petitioning creditor's debt defined in the present Bankruptcy Act, and what judicial interpretation has been put on that definition?*

As to the first part of the question, see answer to question 63. A debt on which an adjudication in bankruptcy is founded must be a debt which existed at the time of the act of bankruptcy, and not payable *in futuro*. (*Ex parte Hayward, in re Hayward*, L. R. 6 Chan. App. 546. See also *ex parte O'Loughlen*, L. R. 6 Chan App. 406, and *ex parte Sturt & Co., in re Pearcy*, L. R. 13 Eq. 309.)

(69.) *State the practical mode of proceeding to obtain an adjudication in bankruptcy.*

By petition, which must be served on the debtor, and will not be taken *ex parte* as formerly. His petition must be verified by

affidavit. On the hearing, the petitioning creditor must prove his debt; also, the trading, if necessary, and the act of bankruptcy. The Court, if satisfied with the proof, will adjudge the debtor a bankrupt.

(70.) *How and within what time must a petition for adjudication in bankruptcy be served on a debtor?*

The petition must be served on the debtor by delivering it to him seven days before the day appointed for hearing. (Act 1869. Rules 60, 61.)

(71.) *When there are three respondents to a petition, and the Court is of opinion that it fails as against one of the respondents, what is the effect on the case as against the other respondents?*

The dismissal of the petition will not prejudice the effect of the petition as against the other two (s. 101).

(72.) *Is there any and what rule as to the signature, attestation, and verification of the petition?*

Where the petition is not attested by an attorney, and the petitioning creditor is unknown to the registrar of the Court, the petition is not to be filed until the petitioner is identified to the satisfaction of the registrar; and by rule 29, where the petitioning creditor cannot himself verify all the statements contained in the petition, he must file in support thereof the affidavit of any person who can depose to them (rule 28).

(73.) *If the petitioning creditor do not proceed with due diligence in his petition, what has the Court power to do to ensure the petition being prosecuted with due diligence?*

Where proceedings are stayed the Court may, if by reason of the delay caused by such stay of proceedings, or for any other cause it thinks just, adjudge the debtor a bankrupt on the petition of some other creditor, and shall thereupon dismiss, upon such

terms as it thinks just, the petition, proceedings in which have been stayed (s. 9).

(74.) *It is desired to have a bankruptcy petition heard forthwith: can this be done, and if so, under what circumstances?*

By rule 42, where a petition is presented, and the act of bankruptcy stated to have been committed is that the debtor has filed, in the Court to which the petition is presented, a declaration admitting his inability to pay his debts, the Court may, if the debtor consents in writing thereto, hear and adjudicate upon the petition forthwith.

(75.) *If a creditor is pressing on proceedings against his debtor to judgment and execution, notwithstanding the presentation of a petition for adjudication, what step should be taken in the interest of the creditors generally?*

A receiver should be appointed, and a restraining order obtained and served. (But see *Re Crowhurst.*)

(76.) *After the presentation of a petition in bankruptcy, will the Court interfere to restrain proceedings by creditors against the bankrupt, and how?*

Yes, by a restraining order (rule 260), and it might be mentioned that the Judicature Acts have in no way affected this power of the Bankruptcy Courts.

(77.) *What is the practice with reference to the appointment of a receiver, and the mode of obtaining such appointment?*

By rule 30, after the presentation of the petition, upon the application of the creditor, and upon proof by affidavit of sufficient grounds for the appointment of a receiver, the Court may, if it thinks fit, make such appointment; or, where the petition is dismissed, the creditor pays the costs of the receiver. (See, also, sect. 13 of the Act, and *Re Davies*, 21 L. T. N.S. 685.) The Court

before it appoints a receiver ought to be satisfied that the creditor *bonâ fide* intends to proceed with his petition, and there ought to be also a written consent signed by the proposed manager or receiver that he will accept the office; again, there ought to be an affidavit of his fitness for the office, but no security is usually required. (Robson's Bankruptcy, 3rd ed. 357.)

(78.) *Can a creditor be admitted to prove the trading or act of bankruptcy?*

A petitioning creditor may himself, if he be able, prove the trading or act of bankruptcy; or he may file in support of his petition the affidavit of any person who can verify the statements contained therein. (See rule 29 and Petition Form, No. 11.)

(79.) *What effect has the death of the debtor before or after adjudication upon the proceedings?*

If a debtor against whom a petition for adjudication is presented dies before the order for adjudication is made, the petition cannot proceed; but when the debtor who has been adjudged bankrupt dies, the Court may order that the proceedings in the matter be continued as if he were alive. (Act 1869, s. 80, par. 9; Robson's Bankruptcy, 554.)

(80.) *Where the petitioning creditor proves the facts necessary for adjudication, but there is a defence to the petition on equitable grounds, will the Court adjudicate or not? Give reasons for your answer.*

Lord Justice James's decision in *ex parte Claxton, in re Claxton*, was as follows: That the registrar was bound *ex debito justitiæ*, the facts required by the Act being proved, to adjudicate, and that the mode of raising the question in a proper case would be by special application to stay the proceedings or to annul the adjudication, and not by way of defence to the order for adjudication.

VI.—The Proceedings after Adjudication.

The First Meeting of Creditors.

(81.) *State the chief matters to be resolved at the first meeting of creditors.*

When an order has been made adjudging a debtor bankrupt, the property of the bankrupt shall become divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy, and for this purpose the Court shall, as soon as may be, summon a general meeting of creditors, to be presided over by the registrar or a chairman to be elected by the meeting, and the creditors assembled at such meeting shall do as follows:—

(i.) By resolution appoint some fit person, whether a creditor or not, to be trustee of the property of the bankrupt at such remuneration as they shall determine (if any), or they may resolve to leave his appointment to the committee of inspection.

(ii.) They shall by resolution declare what security is to be given by the trustee, and to whom, before such trustee enters on his office.

(iii.) They shall by resolution appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting, or authorised by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property.

(iv.) They may by resolution give directions as to the manner in which the property is to be administered by the trustee, and the trustee shall conform to such directions, unless the Court otherwise orders (s. 14).

And the bankrupt shall, at this first meeting of creditors, produce a statement of his affairs, and shall be publicly examined thereon on a day to be named by the Court, and subject to such adjourned public examination as the Court may direct (s. 19).

(82). *Describe the course of procedure at a first meeting of creditors, under an order of adjudication, and under a petition for liquidation by arrangement.*

The creditors, at a first meeting, under an order of adjudication, by resolution, appoint a trustee, settle on his security, appoint a committee of inspection, and give directions as to the administration of the property by the trustee; and the bankrupt produces a statement of his affairs.

At the first meeting, under an application for liquidation, a chairman is elected, debts are proved, proxies are appointed. The debtor's statement is produced, and it is determined whether the affairs of the debtor shall be liquidated by arrangement, &c., &c. (See rule 268 *et seq.* and *supra*, page 29.)

(83). *State how the committee of inspection are appointed, and the greatest number of which such committee may consist, and generally the duties of such committee.*

The committee of inspection are appointed at the first meeting of creditors by resolution of those who have proved. They must not exceed five, and must be either creditors who have proved or authorised by them to vote. The duties of the committee are to superintend the administration by the trustee of the bankrupt's property, and by resolution to give directions as to the manner in which the property is to be administered, to meet every three months, and audit the accounts of the trustee and inspect the estate book, and determine whether any and what dividend be paid (ss. 14, 41, and rule 246).

(84). *What are the qualifications necessary for appointment as a member of the committee of inspection?*

See last answer.

(85.) *Whose sanction is necessary to enable the trustee of a*

bankrupt's estate to pledge any part of the property of the bankrupt, in order to raise money for the payment of debts?

That of the committee of inspection.

(86.) *In considering the debts or demands of creditors with respect to the right of proof, into what two General Classes may such debts or demands be conveniently divided?*

Into such as are secured or unsecured.

VII.—Creditors and Proofs of Debts.

(87.) *State when and how creditors may prove their debts?*

A creditor may prove his debt at any duly summoned meeting of creditors, or at any time before the meeting, by delivering or sending through the post in a pre-paid letter, before the appointment of a creditor's trustee, to such trustee, an affidavit according to the form in the Schedule to the Rules (r. 67). The affidavit may be made by himself, his agent, or clerk, if he state he was authorised to make it, and that the debt was incurred with his knowledge for the considerations stated and is still unpaid (r. 68).

(88.) *Can a creditor who has tendered a proof at any meeting withdraw it, and under what circumstances?*

By rule 273, where any creditor shall desire to retire from any meeting, and not to be considered as present, he may withdraw his proof without prejudice to his again proving his debt on any subsequent occasion. (See also *ex parte Williams, in re Williams*, L. R. 18 Eq. 381.)

But in general permission will not be given to a creditor who has proved his whole debt to withdraw his proof and set up his security. But this has been allowed under special circumstances, as where the creditor has proved in ignorance of the existence of the security. (Robson's Bankruptcy, 3rd ed. 316).

(89.) *When and how are proofs of debt made in bankruptcy and liquidation, and what is the duty of the trustee on receiving proof of debt?*

As to first part of question see answer to question 87; and by rule 72, the trustee must immediately, on receipt of proof, examine it, and in writing reject or admit it, in whole or part, or require further evidence in support thereof, &c. As to proof of debts under a liquidation, it is done and proxies appointed as in bankruptcy (rule 269).

(90.) *How does a Corporation prove?*

A *Corporation* may prove *by agent* duly authorised, under the seal of the corporation. By the same section, a creditor may appoint a representative in writing in all matters in the bankruptcy, and the representative will stand in the same position as the creditor (s. 80: rule 69).

(91.) *What kind of debts are provable under a bankruptcy?*

A "debt provable in bankruptcy" shall include any debt or liability by this Act made provable in bankruptcy (s. 4). Demands in the nature of *unliquidated damages*, arising otherwise than by reason of a contract or promise, shall not be provable, and no person having notice of any act of bankruptcy, available for adjudication against the bankrupt, shall prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice. Save as aforesaid *all debts* and *liabilities* present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the bankruptcy, by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in bankruptcy, and may be proved in the prescribed manner before the trustee in the bankruptcy.

An estimate shall be made according to the rules of the Court for the time being in force so far as the same may be applicable, and where they are not applicable at the discretion of the trustee, of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made such debt or liability shall be deemed to be a debt not provable in bankruptcy. But if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed with the consent of all the parties interested before the Court itself, without the intervention of a jury, or, if such parties do not consent, by a jury, either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the bankruptcy (s. 31).

(92.) *Can a proof be made against a bankrupt's estate for unliquidated damages in any, and what cases?*

Demands in the nature of unliquidated damages, arising by reason of a contract or promise, are provable against the bankrupt's estate (s. 31).

(93.) *Will an unliquidated debt, arising ex contractû, sustain a petition for adjudication, and can it be proved under a bankruptcy?*

By section 6 of the Bankruptcy Act, 1869, the nature of the petitioning creditor's debt must be a liquidated sum due at law or in equity; and consequently the above debt will not support a petition for adjudication; and this not even after verdict, if the

order of adjudication is made before judgment is signed. (*Ex parte Broadhurst*, 2 D. M. & G. 953. Robson's Bankruptcy, 3rd ed. 174. See also *ex parte Sturt*, L. R. 13 Eq. 309; but by the section 31 of the same Act, an unliquidated demand, if it arises "by reason of a contract or promise," is provable. And see *ex parte Mendel, in re Moore*, 33 L. J. Rep. N. S. Bank. 14, as to the ruling of the Court on section 153 of the Bankruptcy Act, 1861.)

(94.) *What claims cannot be proved in bankruptcy?*

Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in bankruptcy, and no person having notice of any act of bankruptcy available for adjudication against the bankrupt, shall prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice (s. 31).

(95.) *At what period are creditors deprived by "The Bankruptcy Act*, 1869," *of their remedy against the property or person of the bankrupt in respect of debts provable in the bankruptcy?*

After adjudication, sect. 12; but secured creditors are not affected. See also secs. 54 and 55, as to enforcing debts provable under the bankruptcy, in certain eventualities.

(96.) *What are the remedies of a person who has sustained pecuniary damage from false imprisonment against the person injuring him, on the bankruptcy of the latter?*

The Bankruptcy Act, 1869, expressly excludes from proof demands in the nature of unliquidated damages, otherwise than by reason of contract or promise. It therefore excludes all such demands founded on tort. But demands founded on tort will be provable if before the date of the order of adjudication the amount has been ascertained by judgment, and the creditor has not previously had notice of the act of bankruptcy. (Robson's Bankruptcy, 3rd ed. 242.) But if judgment has not been signed

until after the adjudication, even though the verdict was obtained before, the bankrupt is not discharged from his liability. (*In re Newman, ex parte Brooke*, 3 Chan. Div., C. A. 494.)

(97.) *What are the rights to, and remedies of, the surety of a bankrupt?*

If the surety has paid the debt, and the creditor has proved his debt, he may stand in the place of such creditor in respect of his proof, or if the creditor has not proved, may prove himself in respect of such payment, provided, however, that at the time of his becoming surety he had no notice of the act of bankruptcy. If he has not paid anything, he may still prove, as on a liability, the amount to be ascertained in the prescribed way, s. 31.

(98.) *A. borrows* 2000*l. from B., and C., as surety for A., deposits in B.'s hands property belonging to C. worth* 1000*l. A. fails, without having repaid any part of the loan, the security still remaining in B.'s hands. What course can B. pursue?*

If a creditor has a security for his debt on the estate of a third person, the rule requiring him to sell or give up a security before the person does not apply in such a case as the above. B. may therefore prove the whole debt against the bankrupt's estate, and apply himself to his security for the deficiency, not receiving, however, in the whole, more than 20*s.* in the pound. (Robson's Bankruptcy, 3rd ed. 317, and cases there cited.)

(99.) *If in the case last put C. wishes to redeem his property by paying the* 1000*l., does it make any, and what, difference in his position whether he does so before or after the bankruptcy?*

Should C. redeem his property before the bankruptcy, he will be entitled to prove for the whole amount as the creditor could have done. If C. do not redeem his property till after the bankruptcy, the surety will treat the creditor as a trustee for him in

respect of any dividend which the latter may have received. (Robson's Bankruptcy, 3rd ed. 264, 265.)

(100.) *Upon what terms is a creditor holding security admitted to prove in the case,—first, of a creditor holding security on the property of the bankrupt; and, secondly, of a creditor holding security on the property of a third person?*

A creditor holding a specific security on the property of the bankrupt, may give up his security and prove for the whole of his debt, or he may retain it, and after realising it or giving credit for the value thereof, may prove against the estate for the balance due to him. A creditor holding the security of a third person is not obliged to give it up or sell it before proving. (Smith's Mercantile Law, 8th ed. 599.)

(101.) *What is the position of a creditor who holds a mortgage by the bankrupt of a life policy with covenant for payment of principal and interest, and to pay the premiums?*

He may, on giving up his security, prove for the whole debt due to him; or after realising or giving credit for his security may prove for the balance; or he may retain his security subject to being redeemed by the trustee for the benefit of the bankrupt's estate (ss. 31, 40).

(102.) *Where a bankrupt has assigned a policy of insurance on his life before his bankruptcy, but notice of the assignment has not been given to the insurance office, does the policy after the bankruptcy belong to the trustee of the bankruptcy or to the assignee of the policy? State the reason for the answer.*

Formerly, until notice was given to the insurance office, the policy and the money receivable on it would have been in the reputed ownership of the debtor, and consequently would have belonged to the assignees in bankruptcy (*Webb's Policy*, 36 L. J.

Chan. 341), but by s. 15 of the 1869 Act this is not now necessary as life policies are *choses in action*, and it is difficult to conceive a case in which they can now be within the doctrine of reputed ownership, and the trustee will take them subject to equities. Notice in writing should however be given to the office to exclude a subsequent assignee for value. (Robson's Bankruptcy, 3rd ed. 284.)

(103.) *What is the operation of the "Order and Disposition" clause in the last Bankruptcy Act on a life policy of insurance effected by the bankrupt, and mortgaged by him before the bankruptcy, notice of the mortgage not having been given to the insurance company? Does the policy money pass to the trustee in bankruptcy or to the mortgagee? Give the reasons for your answer.*

The policy money passes to the trustee in bankruptcy. (*Ex parte Caldwell, in re Currie*, L. R. 13 Eq. 188. See also last answer, and 30 & 31 Vict. c. 144, s. 3. And as to assignment of legal *choses in action* the Judicature Act, 1873, s. 25, sub-s. 6).

(104.) *Is it necessary for a creditor holding a bill of exchange to produce it on tendering his proof at the first meeting? Give your reasons.*

A creditor who holds a bill of exchange or security cannot prove his debt at the first meeting of creditors, except under special circumstances, without producing the bill. (*Ex parte Jacobs, in re Carter*, L. R. 17 Eq. 575.)

(105.) *If the assignee of a chose in action omit to give notice of the assignment to the debtor, and the assignor become bankrupt, how is the claim of the assignee affected?*

The trustee in bankruptcy will have the preference, but he should complete his title by giving notice to the person liable to

pay the debt (*Stuart* v. *Cockerell*, L. R. 8 Eq. 607; Robson's Bankruptcy, 3rd ed. 362).

(106.) *What is the rule as to proof by a creditor holding security?*

A creditor holding a *specific security* on the property of the bankrupt or any part thereof, may, on giving up his security, prove for the whole of his debt. He shall also be entitled to a dividend in respect of *the balance* due to him, after realising or giving credit for the value of the security, as to which see s. 40: and Gen. rules, 78-81.

(107.) *A creditor holding security tenders a proof under a composition arrangement and receives the composition on his whole debt without mentioning or allowing for the value of his security; what are his subsequent rights as to his security?*

It was held in *ex parte The Manchester and Liverpool District Banking Company, in re Littler*, L. R. 18 Eq. 249, that the bank was entitled to retain their security. In a case of composition the Court of Bankruptcy has no jurisdiction to make an order of sale, at the instance of an equitable mortgagee, of the estate of the debtor.

(108.) *What particulars must a secured creditor state in the proof of his debt?*

Unless he has realised his security he must state in his proof:—

(i.) The particulars of it.

(ii.) The value at which he assesses it. (G. r. 99.)

(109.) *Is a secured creditor deemed to be a creditor in respect of the whole of his debt, or in respect of any and what part of it?*

If he give up his security he may prove for his whole debt, but if he realise it, or give credit for its value as noticed *supra*,

he is to be deemed a creditor only in respect of the balance due to him.

(110.) *If a creditor estimates a security which he held at a less sum than the trustee considers it worth, what course can the trustee take?*

By rule 101 the trustee may redeem the security at its assessed value at any time before realisation, or by rule 136 the trustee may require the security to be realised.

(111.) *How does an adjudication in bankruptcy affect the remedy of creditors against the property of the bankrupt, and is a secured creditor with a power of sale at liberty to realise his security?*

After adjudication the creditors are bound by the bankruptcy proceedings, but a secured creditor may realise his security.

(112.) *If a creditor holds an unrealised security for his debt, in what manner is the amount of his debt to be ascertained for the purpose of voting at a meeting of creditors?*

He must state in his proof previously to being allowed to prove or vote the particulars of his security, and the value at which he assesses the same, and he is to be deemed to be a creditor only in respect of the balance due to him after deducting such assessed value of the security (G. r. 99). And any secured creditor so proving is bound to pay over to the trustee the amount his security produces beyond the amount of such assessed value, and the trustee is entitled at any time before realisation of such security by the creditor, to redeem the same upon payment of such assessed value (r. 100). And it is also provided that the proof of any such creditor is not to be increased in the event of the security realising a less sum than the value at which he has assessed the same (r. 101).

(113.) *What is the rule in case a creditor values his security and proves for the balance?* 1*st. When the security realises less than the valuation?* 2*nd. When it is worth more than the valuation?*

See last answer.

(114.) *What is the position of an equitable mortgagee of the bankrupt's real estate as regards the realisation of his security?*

By Gen. rule 78, upon application by motion by any person claiming under an equitable security, the Court having satisfied itself that the party applying is an equitable mortgagee will then proceed to take an account of the principal, interest, and costs due upon such security, and what amount, if any, has been received by him, and the Court will then give directions as to the sale; the trustee has the conduct of such sale unless the Court should otherwise order.

(115.) *State the mode by which an equitable mortgagee can realise his security.*

An equitable mortgagee may depend upon his security and enforce a sale of the property, and apply to the Court by motion for a sale which will take place under the conduct of the trustee as in answer to the last question, and the moneys will be applied in the first case in payment of the costs of the trustee of and attending such application and sale and then in payment and satisfaction of what shall be found due on the mortgage, and should there be any deficiency the mortgagee will be entitled to prove for it. (Robson's Bankruptcy, 3rd ed. 299, 300.)

(116.) *What mode is prescribed by the General Rules of* 1*st January*, 1870, *for the sale of the bankrupt's mortgaged property?*

Upon the application by motion of the mortgagee, after investigating his title, the Court will proceed to take an account of the

principal, interest, and costs due to him on his security, and in case he has been in possession of the property, an account also of the rents, profits, &c., received by him. The Court will then direct notice to be given in such public papers as it shall think fit, when and where, and by whom, and in what way the property, &c., so mortgaged is to be sold, the trustee (unless otherwise ordered) having the conduct of the sale. It is not, however, imperative on any mortgagee to make such application. G. rules 79, 80, and 81 relate to the execution of the conveyance by all proper parties, the perfecting of the title, and the application of the purchase-money.

(117.) *What is the remedy of an equitable mortgagee on the bankruptcy of a mortgagor; and what is the difference in this respect between an equitable and legal mortgagee?*

An equitable mortgagee may depend upon his security and enforce a sale of the property, proving for the deficiency, if any, or upon giving up his security may prove for his whole debt, or he may, on giving credit for the value of his security, prove for the balance due to him. (Bankruptcy Act, 1869, s. 40, and rule 78.) A legal mortgagee is in the same position as an equitable mortgagee, and, in addition, he may enter upon and receive the rents and profits of the property.

(118.) *In a debtor summons by a secured creditor is it necessary he should offer to give up his security, or have it valued; and what notice must be taken of his security in the petition?*

In his petition the creditor should offer to give up his security or have it valued, and give credit therefore. The question of giving up security does not arise until a petition for adjudication is presented. (*Ex parte Mauritz*, L. R. 5 Chan. App. 779.)

(119.) *Has the drawer of a bill of exchange, who has taken it up after an act of bankruptcy committed by the acceptor, but before*

adjudication, a debt making him a good petitioning creditor for adjudication against the acceptor on that act of bankruptcy?

He may file a petition against the acceptor founded on the bill. (*Ex parte Cyrus*, 5 Chan. App. 176.)

(120.) *A. draws bills on B., and ships to him goods as security for and to meet the drafts. The bills are negotiated and before maturity. And while the goods are unsold, both A. and B. become bankrupts; what equity has the bill-holder (he not having taken the bills on the faith of the consignments) to follow the goods as security, and how far is this right affected by the bankruptcy of A. and B., or either of them, and why? Give one or two of the leading cases on the subject.*

The leading case on this subject is *Ex parte Waring*, 19 Ves. 345, the complicated facts of which are clearly stated by the Master of the Rolls in *New Zealand Banking Company*, L. R. 4 Eq. 230; and Lord Cranworth in *Powles* v. *Hargreaves*, 3 D. M. & G., 470, has well pointed out that "no difficulty arises when either party is solvent, as the party holding the bill has nothing to say about the matter, but that in case of the insolvency of both parties, the bill-holder comes in, not on account of any special lien he has on the property, but because the person from whom he holds has a security, which security cannot be taken away from that person until all liability on the bill is at an end." (See also *in re Barned's Banking Company, ex parte Joint Stock Discount Company*, L. R. 10 Chan. App. 198, and *ex parte Lambton, in re Lindsay*, L. R. 10 Chan. App. 405.)

(121.) *Explain the doctrine of Ex parte Waring* (19 Ves. 345), *and illustrate it by stating a hypothetical case.*

The doctrine of *Ex parte Waring* is, that securities held by an acceptor of bills of exchange against his acceptances are available to the holders of the bills, not directly, but through the equity

of the acceptor or the trustee in bankruptcy against him, to have them applied in discharge of the acceptances. For instance, if A. draws on a banker and then deposits with the banker securities to cover the acceptances, and then A. and the banker become bankrupt, the holder of the bills will be entitled to have the securities deposited applied in making good the acceptances.

(122.) *A creditor holds a bill over due, and the drawer and acceptor both become separately bankrupt. What course should he take in order to get a dividend on the whole of his debt from each estate?*

Prove at once against both estates before any dividend is declared, as if after proof he receives a dividend from one estate that will not be deducted from the amount of his proof against the other, *sed contra* if he had received any dividend, or any dividend had been declared before proof. (Robson's Bankruptcy, 3rd ed. 217.)

(123.) *A. and B., not being partners, give to C. a several bond, and A. becomes bankrupt, C. wants to prove on the bond against the estate of A. Can he do so, or must he take any, and if any, what other steps first?*

By Gen. r. 99, a secured creditor, unless he has realised his security, is, previously to being allowed to prove or vote, to state in his proof the particulars of his security, and the value at which he assesses the same, and he is to be deemed a creditor, only in respect of the balance due to him after deducting such assessed value; but this rule does not apply if the creditor has a security for his debt on the estate of a third person. (Robson's Bankruptcy, 3rd ed. 314.)

(124.) *Is there any, and what difference, between the terms on which creditors holding security from the bankrupt, and creditors*

holding security from a third party, are admitted to prove against the bankrupt's estate?

If a creditor has a security for his debt on the estate of a third person, the rule which requires creditors of a bankrupt to sell or give up the security before they prove, does not apply. In the former case the creditor may prove the whole debt against the bankrupt's estate, and apply himself to his security for the deficiency, not receiving however in the whole more than 20*s.* in the pound. (Robson's Bankruptcy, ibid; *Ex parte English and American Bank*, L. R. 4 Chan. App. 50.)

(125.) *Upon a bankruptcy or liquidation of partners what are the rights of a joint creditor holding, as security, separate property of one of the partners, with reference to proof, and dividend, and security?*

In the administration of the property of partners, their joint and separate estates are considered as distinct estates, and, therefore, if a joint creditor has a security upon the separate estate of one partner, he will be entitled to prove against the joint estate without giving up his security. (*Ex parte English and American Bank, supra;* Robson's Bankruptcy, 3rd ed. 318.)

(126.) *A., B., and C. contract jointly. A. becomes bankrupt; in an action by or against B. and C., is it necessary to join A.?*

No; it is not. (Sect. 112.) Robson's Bankruptcy, 3rd ed. 347.

(127.) *Have any, and what classes of debts a preferential claim on a bankrupt's estate?*

The following debts shall be paid in priority to all other debts. Between themselves such debts shall rank equally and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves:

(i.) (a). All *parochial or other local rates*, due from the bankrupt

at the date of his adjudication, and having become due and payable within twelve months next before such time.

(b). All *assessed taxes, land tax, and property or income tax,* assessed on him up to the 5th day of April next before the date of the order of adjudication, and not exceeding in the whole *one year's* assessment.

(ii.) (a). All *wages or salary of any clerk* or *servant* in the employment of the bankrupt at the date of the order of adjudication not exceeding four months' wages or salary, and *not exceeding* 50*l.*

(b). All *wages of any labourer or workman* in the employment of the bankrupt at the date of the order of adjudication, and not exceeding *two months'* wages (s. 32). But see *ex parte Warlter, in re Heath,* L. R. 15 Eq. 412, as to this section applying to liquidations and not to compositions.

(128.) *If seven months' wages be due at the date of stoppage to a servant, at a yearly salary payable monthly, how is he entitled to be paid?*

See last answer (ii) (a), of course he may prove for the deficiency.

(129.) *Have apprentices or articled clerks any preferential claim on the bankrupt's estate?*

Where, at the time of the presentation of the petition for adjudication, *any person is apprenticed,* or is an *articled clerk* to the bankrupt, the order of the adjudication shall, if either the bankrupt, or apprentice, or clerk, give notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement. And if any money has been paid by or on behalf of such apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of

the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case. Where it appears expedient to the trustee, he may on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting as above, *transfer* the indenture of apprenticeship or articles of agreement to some other person (s. 32).

(130.) *What is the extent of a landlord's remedy against a bankrupt estate for rent or proportionate part of rent?*

The landlord or other person to whom any rent is due from the bankrupt, may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for *one year's rent* accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt, may prove under the bankruptcy for the *overplus due*, for which the distress may not have been available (s. 34). And when any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a *proportionate part* thereof up to the day of adjudication, as if such rent or payment grew due from day to day (s. 35).

(131). *Where a bankrupt is indebted for rent, does the position of the landlord differ in any way from that of an ordinary creditor?*

Yes; by s. 34, he is entitled to distrain for one year's arrear

of rent in full out of the estate, in priority to the other creditors, save those referred to in s. 32 and before set out; and if more be due to him he may prove for it under the bankruptcy, and by s. 35 provision is made for proof by landlord in cases of rent falling due at stated periods.

(132.) *A bankrupt owing two years' rent, what are the landlord's powers in regard to its recovery?*

The landlord may distrain for the rent due to him. If however, the distress be levied after the commencement of the bankruptcy, it will be available for one year's rent only, accrued due prior to the order of adjudication, and the residue will be a debt provable under the bankruptcy.

(133.) *Is interest allowable on debts provable in bankruptcy?*

Interest on any debt provable in bankruptcy may be allowed by the trustee under the same circumstances in which interest would have been allowable by a jury if any action had been brought for such debt (s. 36). And by rule 77 interest at 4 per cent. is allowed upon all debts or sums certain, payable at a certain time or otherwise, where interest is not reserved or agreed upon, from the time when the same was due, if due under a written instrument, or if not, then from demand in writing, with notice that interest would be claimed

(134.) *In proving on a bill not due, at what rate or rebate and for what period is interest to be deducted?*

A rebate of interest at the rate of 5*l.* per cent. per annum from the declaration of the dividend to the time at which the debt would have become payable according to the terms on which it was contracted. (Rule 77, 1870.)

(135.) *If the creditor holds security of two distinct firms, having*

some members in common, is he bound to elect against which property he shall prove or not? Give your reason.

See answer to question 137, and further hereon, *In re Simpson*, L. R. 9 Chan. App. 572; *ex parte Stone, in re Welch*, 8 Chan. App. 914; and *ex parte Honey, in re Jeffery*, L. R. 7 Chan. App. 178.

(136.) *What is a double proof, and when is it allowed?*

A double proof is a proof against two estates of the bankrupt for the same debt, as if any bankrupt is at the date of the order of adjudication liable in respect of distinct contracts as member of two or more distinct firms, or as a sole contractor and also as a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contract against the properties respectively liable upon such contracts. (See also *in re Simpson*, L. R. 9 Chan. App. 572; *ex parte Stone, in re Welch*, L. R. 8 Chan. App. 914; *ex parte Honey, in re Jeffery*, L. R. 7 Chan. App. 178; Robson's Bankruptcy, 3rd ed. 669.)

(137.) *Is proof allowable in respect of distinct contracts?*

If any bankrupt is at the date of the order of adjudication liable in respect of distinct contracts, as member of two or more distinct firms or as a sole contractor and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts (s. 37).

(138.) *When there have been mutual credits, debts, and dealings between a bankrupt and a party claiming to prove under his estate, state generally the rights of set-off, and when the creditor may or may not claim the benefit thereof.*

Where there have been mutual credits, mutual debts, or other

mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of such account and no more shall be claimed or paid on either side respectively. But a person shall not be entitled to claim the benefit of any set-off against the property of a bankrupt in any case where he had at the time of giving credit to the bankrupt notice of an act of bankruptcy committed by such bankrupt, and available against him for adjudication (s. 39).

(139.) *What is the distinction between the right to set-off as between solvent parties and under the Bankruptcy Act?*

The right of set-off in bankruptcy does not rest on the same principles as the right of set-off between solvent parties. The latter right is given by the statutes of set-off to prevent cross actions, and if the debts are legal and due to each party in his own right, whether as trustee or not, it will be sufficient for the ordinary plea of set-off. But the object of the mutual credit clause in the bankruptcy statutes is not merely to avoid cross actions but to do substantial justice where a debt is really due from the bankrupt to a debtor to his estate, and therefore the right of set-off in bankruptcy depends upon the beneficial interest. Hence where the debt, though legally due from the bankrupt to the creditor who is indebted to him, is really due to the latter, not for his own benefit but as trustee for another, the right to set-off will not arise. (Robson's Bankruptcy, 3rd ed. 335.)

(140.) *A., a merchant, owes B., a bankrupt,* 100*l. for goods sold, and to be paid for in cash, and B. is indebted to A. in* 50*l. on B.'s acceptance, due subsequently to the bankruptcy. Can A. set off the amount due by B.? And how is such right affected by the*

fact of A. having taken B.'s acceptance after notice of an act of bankruptcy committed by B.?

A. can set off the 50*l.*, provided it was advanced without notice of any act of bankruptcy by B., but not otherwise.

(141.) *State the rights of joint and separate creditors as regards the joint and separate estate of a bankrupt firm.*

By sect. 103, if *one partner* of *a firm* become bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of *voting at any* meeting of creditors, and shall be entitled to vote thereat, but shall *not receive* any dividend out of the *separate* property of the bankrupt until all the *separate* creditors have received the full amount of their debts. (See also rule 76 *et infra.*)

(142.) *Is a joint creditor of two or more partners ever allowed to prove such joint debt in competition with the separate creditors of one partner under a separate bankruptcy of such partner, and upon what grounds?*

See last answer.

(143.) *On the bankruptcy of a firm, how is the property of the partnership, and of the individual partners, administered?*

By general rule 76, distinct accounts are directed to be kept of the joint estate, and also of the separate estate or estates of each bankrupt; and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors; and in case there is an overplus of the separate estate, such overplus is to be carried to the account of the joint estate; and in case there shall be an overplus of the joint estate, such overplus shall be carried to the account of the separate estates of each bankrupt, in proportion to the right and interest of each bankrupt in the joint estate.

(144.) *The partners in a firm give a joint and several promissory note and become bankrupt, having joint and separate assets. What right of proof has the payee against the joint and separate estates?*

The payee is not entitled to receive any dividend out of the separate estates until all the separate creditors have received the full amount of their debts. The rule as to the application of joint and separate property being, that the joint estates shall be applied to the joint debts, the separate to the separate debts, and the surplus of each reciprocally to the creditors remaining on the other. (*Ex parte Christie*, 3 M. D. & De G. 736.)

(145.) *A. and B. being partners are jointly indebted to C., who holds their joint and several promissory note, and also security on the joint estate, and also on the separate estate of B. The bankrupts are also jointly indebted to D., who holds their joint and several promissory note and security on the property of a third person. What are the rights of C. and D. respectively, as to proof upon and receipt of dividends out of the joint estate of the bankrupts, and the separate estate of each of them?*

It appears that a creditor of a firm, with a collateral security for his debt, by way of mortgage or lien on the separate estate of one of the partners, may prove for the full amount of his debt against the joint estate without giving up his security, and in the converse case a separate creditor of one partner having a security on the joint estate may prove for the full amount of his debt against the separate estate without giving up his security on the separate estate (*Bank of Australasia* v. *Flower*, L. R. 1 P. C. 27; *ex parte English and American Bank*, L. R. 4 Chan. App 50; *ex parte Dickin*, L. R. 20 Eq. 767.) The principle upon which such proof is allowed is, that the property comprised in the security forms no part of the estate in which the proof is made, the joint

estate and the separate estate being considered in the administration of property in bankruptcy as distinct estates, and that therefore the creditor is entitled to the ordinary right of a mortgagee having a collateral security from a stranger. (Robson's Bankruptcy, 3rd ed. 670.) And also, in the latter portion of the question, D. can prove against the joint or separate estate. And the rule of giving up his security does not apply, because the security is on the estate of a third person. (Robson's Bankruptcy, 3rd ed. 314.)

(146.) *A., B., and C. are trading in partnership. C. retires and transfers his share in the partnership to A. and B. in consideration of their covenant to pay to him* 2000*l. at the end of the year. Before the expiration of the year, A. and B. are adjudicated bankrupts. C. is solvent. Some of the joint creditors of A., B., and C. remain unpaid at the date of the bankruptcy. What are the rights of such joint creditors under the bankruptcy of A. and B., and has C. any, and if so, what, right to prove and receive dividends under the bankruptcy in respect of the sum of* 2000*l.?*

The joint creditors may prove against the joint estate of A. and B. if there is joint estate, and as C., the solvent partner, is alive, who is necessarily liable for the balance unpaid. (*In re Simpson*, 9 Chan. App. 572.) And, in accordance with the rule that a debtor cannot prove in competition with his own creditors, he cannot prove in respect of his unpaid balance against the joint estate. But C. having paid the balance of the joint debts would be entitled to prove against the separate estate of A. and B. (Robson's Bankruptcy, 3rd ed. 635 *et seq.*)

(147.) *May a creditor, to whom a bankrupt is indebted jointly with others, prove on the bankrupt's estate, vote at the meetings of creditors, and receive a dividend in competition with separate creditors?*

He may prove his debt for the purpose of voting at any

meeting of creditors, and he is entitled to vote at any such meeting; but he is not to receive any dividend out of the bankrupt's separate property until all the separate creditors have received the full amount of their respective debts.

(148.) *Under what circumstances can a solvent partner prove in bankruptcy against the separate estate of his co-partner?*

If he pay all the joint-creditors he may prove against the separate estate of his co-partner for his share of the debt so paid. (Robson's Bankruptcy, 2nd ed. 624.)

(149.) *A. and B. are jointly liable on an acceptance to C. A. becomes bankrupt, and obtains his discharge. How does this affect the liability of his co-debtor B.?*

The order of discharge does not affect the liability of B. (See also *ex parte Isaac, in re De Vecchj*, L. R. 6 Chan. App. 58).

(150.) *Can a partner, under any circumstances, prove against the joint estate of his firm in competition with joint creditors?*

With two exceptions, he cannot. One is where the property of the partner has been fraudulently applied for the purposes of the partnership, and the other where a distinct trade is carried on by one or more of the members of the firm, and a debt has accrued from the major to the minor firm, or individual partner in the dealings between them in the separate trades. (Robson's Bankruptcy, 3rd ed. 671.)

(151). *Where a trustee in bankruptcy gives notice to his creditor that he has rejected his proof, what steps are to be taken by a creditor dissatisfied with the decision of the trustee?*

He may, within fourteen days after the receipt of the notice from the trustee, apply to the Court to vary or reverse the decision, and give notice to the trustee thereof seven days before the day so fixed (rule 74).

(152.) *Define the term "secured creditor" as made use of in the Act.*

A "secured creditor" shall mean any creditor holding any *mortgage, charge,* or *lien* on the bankrupt's estate, or any part thereof, as security for a debt due to him (s. 16).

(153.) *Define the term "liability" as made use of in the Act.*

"*Liability*" shall include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the bankruptcy; and generally it shall include any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether such payment be as respects amount fixed or unliquidated; as respects time present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules or assessable only by a jury or as matter of opinion (s. 31).

(154.) *Define a "special" as distinguished from an "ordinary" and an "extraordinary" resolution under the Act.*

A special resolution is decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at the meeting and voting on such resolution, and by sect. 125, sub-sect. 14, in calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in number. An ordinary resolution is one decided by a majority in value of the creditors, personally or by proxy at the meeting and voting on such resolu-

tion (s. 16) An extraordinary resolution of creditors under the 126th section shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at a general meeting, to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed. In calculating a majority under this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated on the same day, and the same description of creditors shall be entitled to vote at such general meetings as in bankruptcy.

(155.) *How are creditors for sums under* 10*l. reckoned in number and value for a special resolution?*

In bankruptcy they are reckoned in value and in number. But in calculating a majority under sect. 125, sub-sect. 14, in value but not in number.

(156.) *State shortly the difference between a special resolution under Section* 125 *and an extraordinary resolution under Section* 126—(*a*) *as regards the property of the debtor,* (*b*) *as regards the jurisdiction of the Court.*

As regards the property of the debtor in the first case it vests in the trustee under the liquidation without a deed, in the second, it remains with the bankrupt. We are not aware of any difference in the jurisdiction of the Court. (Robson's Bankruptcy, 3rd ed. 680, 681.)

VIII.—Appointment of the Trustee, and his Duties.

(157.) *State how the trustee or trustees in bankruptcy may be appointed; and how the security he or they are to give before entering on the office may be defined.*

He or they are appointed by an ordinary resolution at the first meeting, that is to say, by a majority in value of the creditors present personally, or by proxy, and voting on such resolution, or they may resolve to leave the appointment to the committee of inspection appointed by them, and by sub-sect. 2 of sect. 14 of the Act they shall, when they appoint a trustee or trustees by resolution, declare what security is to be given, and to whom by the person so appointed, before he enters on the office of trustee, and by General Rule 106 it is provided that omission to pass a resolution under sub-sects. 2 and 3 of sect. 14, shall not invalidate the appointment of a trustee, and where no security has been specified to be given by the trustee, he shall be deemed to be personally responsible in the performance of the duties of his office to the extent of the value of the property of the bankrupt.

(158.) *What evidence is necessary to the appointment of a trustee?*

The appointment of a trustee is reported to the Court, and the Court, upon being satisfied that the requisite security has been entered into by him, gives a certificate declaring him to be trustee of the bankruptcy named in the certificate, and such certificate is conclusive evidence of the appointment, and such appointment shall date from the date of the certificate (s. 18).

(159.) *Who is to be trustee until one is appointed by the creditors?*

By sect. 17, until a trustee is appointed, the registrar is the trustee for the purposes of the Act, and immediately upon the

order of adjudication being made the property of the bankrupt vests in the registrar; on the appointment of a trustee, the property forthwith passes to and vests in the trustee appointed. And by sect. 18, when the registrar is trustee, and when a trustee is changed, a certificate of the Court is given declaring the person therein named to be trustee, and when the registrar holds the office of trustee he applies to the Court for directions as to administration of the bankrupt's property.

(160.) *In whom does the property of the bankrupt vest after adjudication; and is any conveyance or transfer of the property necessary in order to vest the property in the trustee?*

By virtue of sect. 17, in the registrar of the Court, until a trustee is appointed. Upon the appointment of a trustee the property passes to and vests in him without any conveyance or transfer.

(161.) *State shortly the duties and powers of the trustee in bankruptcy.*

His duties are to take possession of the bankrupt's property, receive proofs of debts, to realise the bankrupt's property, to declare and distribute dividends, to audit his accounts, to transmit his statements to the comptroller, pay over all moneys, and report to the Court when all the bankrupt's property has been realised (see also rules 242, 243).

His powers are:

(i.) To receive and decide upon proof of debts and administer oaths.

(ii.) To carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same.

(iii.) To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt.

(iv.) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail, in the same manner as the

bankrupt might have dealt with the same, and sects. 56 to 73 (both inclusive) of 3 & 4 Will. 4, c. 74, extend and apply to proceedings in bankruptcy.

(v.) To exercise any powers the capacity to execute which is vested in him under this Act, and to execute all necessary powers of attorney, deeds, and other instruments which may be necessary.

(vi.) To sell all the property of the bankrupt by public auction or private contract, with power, if he thinks fit, to transfer the whole to any person or company, or to sell the same in parcels.

(vii.) To give receipts which shall effectually discharge the person paying.

(viii.) To prove, rank, claim, and draw dividends in the matter of the bankruptcy, or sequestration of any debtor of the bankrupt, and he may appoint the bankrupt himself to superintend the management of the property, or of any part thereof, or to carry on his trade for the benefit of the creditors (ss. 25, 26, and see also rule 119).

(162.) *To whom is the duty entrusted of examining proofs of debt, who is authorised to admit or reject them, and what is the remedy of a creditor who is dissatisfied with the rejection of his proof?*

The trustee, and he may admit or reject them, or require further evidence. The creditor's remedy is to apply to the Court within fourteen days to vary or reverse the decision, and he must give seven days' notice of the day so fixed by the Court for the hearing of such application.

(163.) *Specify some of the powers of the trustees, distinguishing those in respect of which it is necessary for him to have the sanction of the committee of inspection.*

He should, immediately on his appointment, take possession of

the bankrupt's property, receive proofs of debts, keep proper books, realise the bankrupt's property, and act generally (as pointed out in the above answer) in administering it. Subject to the sanction of the committee of inspection, he may do, amongst others, the following things—

(i.) Mortgage or pledge any part of the bankrupt's property for the purpose of raising money for the payment of his debts.

(ii.) Refer any dispute to arbitration, compromise debts, &c., due to and from the debtor.

(iii.) Divide in its existing form amongst the creditors, according to its estimated value, any property which, from its peculiar nature or other special circumstances, cannot advantageously be realised by sale.

(164.) *State the books which the trustee of a bankruptcy is directed to keep by the general rules under "The Bankruptcy Act,* 1869," *and state also who is entitled to inspect such books?*

A record book and an estate book, which the inspectors and the creditors of the bankrupt, or their agents, are entitled to inspect. —(G. R. 242, 243, and 244.)

(165.) *Has a trustee power to accept compositions or general schemes of arrangement?*

The trustee may, *with the sanction of a special resolution* of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt or assent to any general scheme of settlement upon such terms as may be thought expedient and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the judge of the Court signing the instrument containing the terms of such composition or scheme or embodying such terms in an order of the Court (s. 28).

(166.) *May a trustee employ a solicitor, or if he be a solicitor is he entitled to be paid for his services?*

The trustee *shall not without the consent of the committee of inspection* employ a solicitor or other agent; but where the trustee is *himself a solicitor* he may *contract* to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as trustee, including *all professional services* (s. 29).

(167.) *What is the creditors' trustee to do with all moneys coming to his hands, and how long may he keep more than* 50*l. in his hands without incurring any liability of interest?*

The trustee shall pay all sums from time to time received by him *into such bank* as the majority of creditors in number and value at any general meeting shall appoint, and, failing such appointment into the *Bank of England.* And he must not keep at any time in his hands any sum exceeding 50*l.* for more than *ten days*, otherwise he will become subject to the liabilities mentioned in the next answer (s. 30; see also rule 109).

(168.) *What liabilities attach to a trustee for keeping in his hands money belonging to a bankrupt's estate?*

If he keeps in his hands at any time a sum exceeding 50*l.* for more than ten days, he is liable,

(i.) To pay interest on any amount over and above that sum after the rate of 20 per cent.

(ii.) To be dismissed by the Court on the application of any creditor without remuneration, and with costs of application for dismissal, unless he can give satisfactory reasons to the Court for retaining the amount (s. 30; rule 109).

(169.) *State shortly the power the trustee has of dealing with property of the bankrupt consisting of stock, shares in ships or other transferable property, and choses in action.*

The right to transfer the *stock, shares in ships, shares* or any

other property *transferable in the books* of any company, office, or person shall be absolutely vested in the trustee to the same extent as the bankrupt might have exercised the same if he had not become bankrupt.

With respect to *choses in action* any action, suit, or other proceedings for the recovery of such things, instituted by the trustee shall be instituted in his official name, and such things shall, for the purpose of such action, suit, or other proceeding, be deemed *to be assignable* in law, and to have been duly assigned to the trustee in his official capacity (s. 22).

(170.) *Where any portion of the bankrupt's estate consists of copyhold or customary property, what powers has the trustee of dealing with the property?*

He is not compelled to be admitted to such property, but may deal with it in like manner as if it had been capable of being, and had been, duly surrendered, or otherwise conveyed to such uses as he might appoint.

(171.) *By what means can the trustee of the estate relieve it of property which is onerous; and to what class of property do his powers in this respect extend?*

He may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer, the property disclaimed, if a contract, shall be deemed to be determined; if a lease, to have been surrendered; and if shares in any company, forfeited from the date of the order of adjudication; and if any other species of property, it reverts to the person entitled on the determination of the estate or interest of the bankrupt; if no such person be in existence no estate or interest is to remain in the bankrupt; and the sect. includes any other property that is unsaleable, or not readily saleable by reason of onerous covenants, in addition to the classes of property above alluded to, and notwithstanding the

trustee has endeavoured to sell, or has taken possession of the property, or exercised any act of ownership in relation thereto. Upon application in writing by any person interested in the property, the trustee must disclaim or not within twenty-eight days, or such other time as the Court may allow, after the receipt of such application (s. 23).

(172.) *What are the duties and liabilities of the trustee in bankruptcy with respect to the debtor's leasehold property; is he liable under any, and what, circumstances for the rent and covenants in the lease?*

He should, if the leasehold be not a valuable one, disclaim it, sect. 23 of "Bankruptcy Act, 1869," by leave of the Court, rule 28, 1871. If he do not disclaim it within twenty-eight days after the receipt of an application from the lessor, or within such further time as shall be allowed by the Court, he will be liable for the rents and covenants.

(173.) *When any property of a bankrupt, acquired by a trustee under the Bankruptcy Act,* 1869, *consists of a leasehold interest of no value, what steps must the trustee take in order to relieve the estate from liability to the rent and covenants?*

He should execute a disclaimer of the same, leave of the Court having been first obtained for that purpose, pursuant to rule 28 of the Bankruptcy Rules, 1871.

The lease is deemed to be surrendered on the date of the execution of such disclaimer, and by sect. 23 of the Act, no estate is to remain in the bankrupt, and any person injured by the disclaimer is to be deemed a creditor and may prove to the extent of the injury.

(174.) *Is there any limitation of time for such disclaimer?*

The trustee shall not be entitled to disclaim any property as above in cases where an application in writing has been made to

him by any person interested in such property requiring such trustee to decide whether he will disclaim or not, and the trustee has, for a period of not less than *twenty-eight days* after the receipt of such application, or such further time as may be allowed by the Court, declined or neglected to give notice whether he disclaims the same or not (s. 24).

(175.) *Under what style may a trustee sue and be sued and hold property of the bankrupt?*

The trustee may sue and be sued by the official name of "*The Trustee of the Property of——, a Bankrupt,*" inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter *into any* engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office (s. 83).

(176.) *Can a trustee be removed, and how?*

By the same sect. the Court may, upon cause shown, remove any trustee. The creditors may, by *special* resolution (decided by a majority in number and three-fourths in value), at a meeting specially called for that purpose of which *seven days'* notice has been given, remove the trustee and appoint another person to fill his office, and the Court shall give a certificate declaring him to be trustee; and if a trustee be adjudged bankrupt he shall cease to be a trustee, and the registrar shall, if there be no other trustee, call a meeting of creditors for the appointment of another trustee in his place. See also rule 120, by which it is provided that before the creditor desires a meeting to be held for the removal of the trustee, he shall apply to a member of the committee of inspection for that purpose, and when such member refuses to summon a meeting, or there is no committee of inspection, the creditor may apply to the Court on an affidavit of facts, and the Court may direct the registrar to summon a

meeting or may direct notice to be given to the trustee to show cause why the Court should not remove him.)

(177.) *In what manner is a vacancy in the office of trustee by death, resignation, or otherwise, to be filled up?*

By the creditors at a general meeting, and such meeting may be convened by the continuing trustee, if there are more than one, or by the registrar on the requisition of any creditor. Should there be no trustee the registrar acts as such, but does not give security (s. 83; see also rule 128).

(178.) *Should it happen from any cause that there is no trustee acting during the continuance of a bankruptcy, upon whom does the duty of trustee devolve?*

The Registrar of the Court for the time having jurisdiction in the bankruptcy (s. 84).

(179). *What account must the trustee render, and to whom and when must such account be rendered?*

The trustee shall call a meeting of the committee of inspection once at least *every three months*, when they shall audit his accounts and determine whether any and what dividend is to be paid. The trustee having had his quarterly statement of accounts audited as aforesaid, shall, forthwith after the said audit, forward the certified statements to "The Comptroller in Bankruptcy," adding thereto his certificate that it is the copy certified by the committee. He shall also therewith forward an office copy of the statement of affairs filed by the bankrupt, showing thereon in red ink the difference between the sums stated by the bankrupt and the sum realised or estimated by the trustee to be realised, and shall also state the reasons why any property not realised has not been realised (s. 55; rule 247: see also ss. 56 and 58, and rule 250).

(180.) *In whom does the declaration of a dividend vest?*

The dividend is declared by the trustee under the authority of the committee of inspection (s. 55).

(181.) *When and under what circumstances is a trustee entitled to call for his release?*

When the bankruptcy is closed, the trustee shall apply to the registrar to fix a time and place for a meeting of the creditors to consider an application to be made to the Court for his release, and upon such time being fixed he shall summon a meeting of the creditors to consider such application, stating therein the time and place on which the application to the Court will be made. At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the bankruptcy has been conducted, with a list of the unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for a release. The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they, or any of them, may appear before the Court and oppose such release. The Court shall, on a hearing, grant or withhold the release accordingly, and if it withhold the release it shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with and the Court thinks just to grant the release (s. 51; see also rule 122).

(182.) *State the effect of the release of the trustee.*

The order of the Court releasing the trustee shall discharge him *from all liability* in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee. But such order

may be revoked by the Court on proof that it was obtained by fraud (s. 53.) And by rule 124 it also operates as a removal of the trustee, and thereupon the registrar becomes trustee.

IX.—What Property vests in the Trustee.

(183.) *Define the meaning of the word "property" as used in the Act.*

"Property" means and includes money, goods, things in action, land, and every description of property whether real or personal, also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined (s. 4).

(184.) *State generally what property is divisible among the bankrupt's creditors?*

(i.) All property vested in bankrupt at the commencement of the bankruptcy, or which may be acquired by, or devolve on, him, during its continuance.

(ii.) The capacity to exercise and to take proceedings for exercising all such powers in or over, or in respect of, property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance, except the nomination to a vacant ecclesiastical benefice.

(iii.) All goods and chattels being at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, *being a trader*, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner, provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause (s. 15).

(185.) *What property of the bankrupt does not devolve upon the trustee for division amongst the creditors?*

(i.) *Property held* by the bankrupt *on trust* for any other person.

(ii.) *The tools* (if any) of his trade, and the *necessary wearing apparel* and *bedding* of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, *not exceeding* 20*l.* in the whole.

(iii.) *The right of nomination* to a vacant ecclesiastical benefice (s. 15.)

(186.) *If at the time of his bankruptcy the bankrupt be entitled to present to an ecclesiastical benefice then vacant, who will, after the bankruptcy, be entitled to the right of presentation?*

The right of presentation is in the bankrupt, for the law does not consider the void turn as of any pecuniary value. *Galley* v. *Selby*, 1 Str. 403. (Smith's Merc. Law, 8th ed., 635.)

(187.) *How is property affected which is deemed to be in the order and disposition of a bankrupt; and what is the difference in the operation of the clause in cases of traders and non-traders?*

All goods and chattels being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, *being a trader*, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner, shall pass to his trustee and become divisible amongst his creditors (s. 15).

(188.) *Under any and what circumstances do goods and chattels of which the bankrupt has the possession, but of which he is not the owner, pass to his trustee, and are there any and what exceptions to the rule?*

All goods and chattels, being at the commencement of the bankruptcy *in the possession, order,* or *disposition* of the bankrupt, *being*

a trader, by the consent and *permission* of the true owner, of which goods and chattels the bankrupt is *reputed owner*, or of which he has taken upon himself the sale or disposition as owner, provided that *things in action* other than debts due to him in the course of his trade or business shall *not be deemed goods* and *chattels* within the meaning of this clause.

This rule does not apply to *fixtures* nor to *goods* in the bankrupt's possession as *executor* or *administrator*. Nor to *goods* in the bankrupt's possession as *factor*, or for a particular purpose (s. 15).

(189.) *Is there any exception to the rule that where a debt is assigned, and the assignor afterwards becomes bankrupt, notice of the assignment must be given, so as to take it out of his order and disposition, and, if so, state in what instances?*

In the case of debts secured on real estate, they pass with the land, and notice to the debtor is not necessary for the transfer of debts secured by negotiable instruments, as promissory notes and bills of exchange. (Robson's Bankruptcy, 3rd ed. 457.) And it might be mentioned that the 15th section, which only applies to traders, does not include things in action other than debts due to the bankrupt in the course of his trade or business.

(190.) *Explain shortly the doctrine of reputed ownership, and to what things in action does it apply?*

Lord Redesdale thus explained it. "The doctrine applies to chattels in the possession of the bankrupt in his order and disposition with the consent of the true owner, that means where the possession, order and disposition is in a person who is not the owner, to whom they do not properly belong, and who ought not to have them, but whom the owner permits unconscientiously, as the Act supposes, to have such order and disposition." The object was to prevent deceit by a trader, from the visible possession of property to which he was not entitled. But in the construction

of the Act the nature of the possession has always been considered, and the words have been construed to mean possession of the goods of another with the consent of the true owner. (Robson's Bankruptcy, 2nd ed. 413.) As to things in action, the doctrine applies only to debts due to the bankrupt in the course of his trade or business.

(191.) *Is the doctrine of reputed ownership applicable to traders and non-traders alike, or is there any, and what, distinction between them? Were any, and if so, what changes in this respect, made by the Bankruptcy Act*, 1869?

By the Act of 1861, the doctrine of reputed ownership applied to all persons whether traders or not. By the Act of 1869 it only applies in the case of a *trader*, and it is also provided that things in action other than debts due to him in his course of trade or business, shall not be deemed goods and chattels within the meaning of the Act (*Ex parte Union Bank of Manchester, in re Jackson*, L. R. 12 Eq. 354); and under the 15th section the rule does not apply to fixtures, nor to goods in the bankrupt's possession as executor or administrator, nor to goods in the bankrupt's possession as factor, or for a particular purpose.

(192.) *There are two classes of cases where property demised to the bankrupt have been held to pass to his trustee under the reputed ownership clause. The first is where the bankrupt has once been the owner, the other where he has not; the evidence required to establish reputed ownership in each of these cases is different. What is the difference?*

Where a bankrupt has once been the owner some decided evidence is necessary to show that the ownership has changed hands. On the other hand, one is not to assume that because a bankrupt is in possession of a furnished house at the time of his bankruptcy that he is necessarily reputed owner. Again a trustee will have no title to goods and chattels left in the bankrupt's

possession and power at the time of the bankruptcy, so long as it can be shown that the real ownership is in some one else, who has not been guilty of laches or negligence. (See, hereon, *Ashton* v. *Blackshaw*, L. R. 9 Eq. 510; *Ex parte Watkins, in re Couston*, L. R. 8 Chan. App. 520; *Ex parte Lovering, in re Jones*, L. R. 9 Chan. App. 621; *Hamilton* v. *Bell*, 10 Ex. 545; and see also Robson's Bankruptcy, 3rd ed. 445, 463.)

(193.) *How is the equity of redemption of a bankrupt in real estate dealt with by the trustee in bankruptcy? Can the trustee compel the production of the title deeds by the mortgagee?*

He can sell the equity of redemption, and the Court may, under the 96th sect. of the Bankruptcy Act, compel the production of the title deeds, or again the trustee might disclaim such equity.

(194.) *If the business premises of the bankrupt be mortgaged, what are the rights of the trustee as regards the trade fixtures and fixed machinery respectively?*

The trade fixtures would pass to a mortgagee of the freehold, and that even if annexed after the date of the mortgage. (*Cullwick* v. *Swindell*, L. R. 3 Eq. 249.) The fixed machinery would also belong to the mortgagee. (See, upon this point, *Longbottom* v. *Berry*, L. R. 5 Q. B. 123.)

(195.) *If the manufactory of the bankrupt be mortgaged, what are the rights of the trustee as regards trade fixtures, and fixed machinery?*

Generally speaking the trustee of a bankrupt would be entitled to whatever interests in the fixtures the bankrupt himself possessed. (*Elwes* v. *Mawe*, Sm. L. C. 188.) It appears from very recent cases that trade fixtures, though put up since the date of the mortgage, so far as they are affixed to the freehold, go with

it to the mortgagee and not to the trustee. (*Re Richards*, 38 L. J. Bkcy. 9.)

(196.) *A person is owner of two mills, each containing fixed machinery; the one is freehold, the other leasehold. He mortgages by deed both mills with the machinery. Neither of the mortgages is registered. He becomes bankrupt. State to whom these two sets of machinery will belong, and give the reason for your answer.*

The question is "fixed machinery," and in each case the machinery would belong to the mortgagee upon the authority of the cases of *Longbottom* v. *Berry*, L. R. 5 Q. B. 123, and *ex parte Daglish, in re Wilde*, L. R. 8 Chan. App. 1072. Should there be any power given to deal with tenant's or trade fixtures separately they will pass to the trustee in the bankruptcy because they require registration under the Bills of Sale Act. (*In re E. Eslick, ex parte Alexander*, 4 Chan. Div. C. A. 803.)

(197.) *Land held in fee-simple, having thereon* buildings *and* fixtures, *which the owner erected for trade purposes, is mortgaged without mention of those erections. Do the buildings or fixtures or either pass to the mortgagee; would there be a difference if the land were leasehold for years?*

A mortgage of freehold land will carry buildings and fixtures, whether erected or attached before or after the date of the security (*Ex parte Reynal*, 2 M. D. & De G. 443), and there would be no difference if the lands were leaseholds (*Langstaff* v. *Meagoe*, 2 Adol. & Ell. 167; *Ex parte Astbury*, L. R. 4 Chan. App. 630.)

(198.) *Is the mortgage in either of the cases in the last question within the Bills of Sale Act?*

It is not. (*Longbottom* v. *Berry and Another*, L. R. 5 Q. B. 123; *Ex parte Daglish, in re Wilde*, L. R. 8 Chan. App. 1072.) The true test whether a mortgage deed of a building and fixtures requires registration under the Bills of Sale Act, as respects the

fixtures, is whether it gives power to the mortgagee to sell or take possession of the fixtures separately from the building. (*Ex parte Barclay, in re Joyce*, L. R. 9 Chan. App. 576; see also *Meux* v. *Jacobs*, W. N. 1875, 52.)

(199.) *A trader mortgages his mill, including fixed machinery; the mortgage is not registered under the Bills of Sale Act. On the trader failing, can his assignees claim the machinery, or what circumstances, according to recent decisions, govern this?*

The trustee cannot claim the machinery, but it passes to the mortgagee, and the deed does not require registration under the Bills of Sale Act. (For cases, see answers to previous questions.)

(200.) *Where a mortgage deed is of a building and the fixtures, what is the true test, whether it requires registration or not, under the "Bills of Sale Act," as respects the fixtures?*

Whether the mortgagee can sever the trade fixtures, and can deal with them separately; if so, the deed must be registered under the Bills of Sale Act. (*In re E. Eslick, ex parte Alexander*, 4 Chan. Div. 503.)

(201.) *A bill of sale is executed in accordance with an agreement made two years previously. The grantor filed his petition for liquidation the same day, but after the execution of the bill of sale, and the latter was registered within the twenty-one days, can the holder of the bill of sale maintain his title to the goods?*

Assuming that the goods were taken possession of by the grantor of the bill of sale before the order of adjudication the title of the holder would prevail over that of the trustee, but not otherwise in the case of a trader. (*Ex parte Homan, in re Broadbent*, L. R. 12 Eq. 598.) But see *ex parte Brown, in re Scrivener*, heard the 12th of February, 1872 but not reported, but confirmed in *ex parte Harding*, L. R. 15 Eq. 223.

(202.) *Are goods in the possession of a person at the time of his bankruptcy subject to a bill of sale, which entitles him to possession until demand of debt and default, in his order and disposition?*

See last answer.

(203.) *Is a registered bill of sale of a debtor's goods valid against a trustee in bankruptcy and an execution creditor, or either of them?*

A duly registered bill of sale is valid against an execution creditor.

(204.) *What is necessary to give validity to a bill of sale of furniture and other movables remaining in the order and disposition of a debtor as against the trustee in bankruptcy?*

The bill of sale must be registered, which entitles the bankrupt, unless a trader, to the possession of the goods until demand of debt and default, and consequently is valid against a trustee in bankruptcy. (Sect. 15, sub-division 5; *in re Broadbent*, L. R. 12 Eq. 598). Should the bankrupt, however, be a trader, the trustee in bankruptcy would be entitled, unless possession had been taken of such goods under the bill of sale.

(205.) *How will the rights of the grantee under a bill of sale be affected on the bankruptcy of the grantor by the omission to register, and will it make any difference if the grantor be not a trader, or if the grantee have removed goods before the bankruptcy?*

As between the grantor and grantee registration is unnecessary, and even as against the trustee in bankruptcy, and creditors, registration is unnecessary if the grantee takes possession of the chattels within twenty-one days after the making of the bill of sale—although in the meantime, i.e., between the making of the bill of sale and the expiration of the twenty-one days, a creditor may have sued out execution and the sheriff seized the goods under such execution. (*Marples* v. *Hartley*, 30 L. J. Q. B. 92.)

It is clear, also, that if the grantee obtains possession of the goods comprised in the bill of sale at any time before they are seized in execution by a creditor, although the twenty-one days may have expired, the bill of sale—though unregistered—confers a good title on the grantee. With regard to s. 15 of the Bankruptcy Act of 1869, sub-division 5, it is enacted that all goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, *being a trader*, by the consent or permission of the true owner are comprised in the bankrupt's property divisible amongst his creditors.

(206.) *An execution creditor for a sum less than* 50*l. has seized the goods of a bankrupt before he commits an act of bankruptcy, but has not sold prior to the adjudication. Is the creditor or the trustee entitled to the proceeds of the goods?*

The creditor. The leading authorities are the following cases:—*Slater* v. *Pinder*, L. R. 6 Ex. 228, 7 Ex. 95; *Ex parte Rocke, in re Hall*, L. R. 6 Chan. App. 795; *Ex parte Bailey, in re Jecks*, L. R. 13 Eq. 314.

(207.) *A judgment creditor issues an execution under which the sheriff or high bailiff of the County Court, as the case may be, takes the goods in execution, the judgment debtor is adjudicated a bankrupt; who will be entitled to the proceeds of the execution?*

Where the goods of *any trader* have been taken in execution in respect of judgment for a sum *exceeding* 50*l.*, and sold, the sheriff, or in the case of a sale under direction of the County Court the high bailiff or other officer of the County Court, shall *retain the proceeds* of such sale in his hands for a period of *fourteen days*, and upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale after deducting expenses on trust to pay the same to the trustee. But if no notice of such

petition be served on him within such period of *fourteen days*, or if, such notice having been served, the trader is not adjudged bankrupt on such petition, or on any other petition, of which the sheriff, high bailiff, or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done, had no notice of the bankruptcy petition been served on him (s. 87). See also *ex parte Villars, in re Rogers*, L. R. 9 Chan. App. 432, as to the effect of bankruptcy within twelve months, and *ex parte Spooner, in re Smith*, L. R. 10 Chan. App. 168.

(208.) *State shortly the effect of the provisions of the "Bankruptcy Act" in regard to executions under* fieri facias.

Sect. 95 renders valid, notwithstanding any prior act of bankruptcy, any execution or attachment against the land or goods of the bankrupt, if in the first case executed in good faith by *seizure*, and in the second case by seizure and sale before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being executed in the one case by *seizure*, and in the other by *seizure and sale*, notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication. Where the seizure is before the act of bankruptcy the section does not apply, and upon this section generally, see the following cases: *Ex parte Todhunter, in re Norton*, L. R. 10 Eq. 430; *Edwards* v. *Scarsbrook*, 7 L. T. N. S. 275; and *ex parte Veness, in re Gwynn*, L. R. 10 Eq. 424; see also s. 87 of the Act 1869.)

By sect. 13, the Court any time after the presentation of a petition may restrain further proceedings in any action, suit, execution, or other legal process, against the debtor in respect of any debt provable in bankruptcy, or may allow it to proceed upon such terms as it thinks just, and by the same section the Court is also empowered to appoint a receiver or manager of the property or business of the debtor.

(209.) *A. obtained a judgment for* 100*l. against B., and under a* fi. fa. *the sheriff levied the amount, which on the expiration of fourteen days he paid over to the execution creditor. Shortly after the money was paid, B. was made a bankrupt, the act of bankruptcy being the levy under the* fi. fa. *Under these circumstances, what are the relative rights and liabilities of the sheriff, the execution creditor, and trustee under the bankruptcy?*

If no notice be given to the sheriff before the expiration of fourteen days of a bankruptcy petition, the execution creditor is entitled to the proceeds of the sale. (*Ex parte Villars, in re Rogers,* L. R. 9 Chan. App. 432.)

(210.) *When is the trustee in bankruptcy entitled to the proceeds of sale of goods seized and sold by the sheriff, under an execution before the presentation of the petition of bankruptcy?*

Where the execution creditor has notice before seizure and sale of an act of bankruptcy committed by the bankrupt, and available against him for adjudication (*Ex parte Todhunter, in re Norton,* L. R. 10 Eq. 430; *Edwards* v. *Scarsbrook,* 7 L. T. N. S. 275); and also where the bankrupt is a trader, and the debt exceeds 50*l.* and notice is served, within fourteen days after the sale, upon the sheriff, of presentation of a bankruptcy petition (*Ex parte Villars, in re Rogers,* L. R. 9 Chan. App. 432.)

(211.) *If an execution be levied on the goods of a debtor who, in ten days' after the seizure becomes bankrupt, has the assignee any claim to the proceeds, or any, and what part of the proceeds of the execution?*

In the case of *ex parte Todhunter, in re Norton,* L. R. 10 Eq. 435, a creditor levied an execution against the goods of a *non-trader*-debtor, who after seizure but before sale filed a petition for liquidation, and at the meeting of creditors a resolution for liquidation was duly passed, and a trustee appointed. In the meantime, how-

ever, the sheriff had sold the goods, and it was held that the *execution creditor* was entitled to the proceeds of the sale against the trustee. The leading authorities are the following cases:— *Ex parte Rock, in re Hall*, L. R. 6 Chan. App. 795; *Ex parte Bailey, in re Jecks*, L. R. 13 Eq. 314, *S. C.*; but see *ex parte Veness*, L. R. 10 Eq. 419.

(212.) *Under what circumstances will a creditor be entitled to the proceeds of sale of the goods of a non-trader bankrupt debtor which he has seized under an execution and sold, where the act of bankruptcy precedes the seizure.*

If the seizure and sale took place before the date of the order of adjudication, without notice of the act of bankruptcy. (See cases cited.)

(213.) *After seizure and sale and payment of the proceeds to the execution creditor at the expiration of the fourteen days, the debtor is adjudicated a bankrupt, the act of bankruptcy being the execution. Can the execution creditor retain the fruits of his execution, or is the trustee in bankruptcy entitled to the amount produced by the sale?*

Should this be an execution creditor of a trader for a sum not less than 50*l.*, the creditor will be entitled to receive the money. (*Ex parte James*, L. R. 9 Chan. App. 609.) And the cases of a creditor of a non-trading debtor, or a trader-debtor where the debt is less than 50*l.*, are not within the 87th sect. See *Slater* v. *Pindar*, L. R. 7 Eq. 95; *Ex parte Rocke*, L. R. 6 Chan. App. 795.

(214.) *If the bankrupt be a beneficed clergyman how would the trustee proceed?*

The trustee may apply for a *sequestration of the profits of the benefice*, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without

any writ or other proceeding, and it shall have priority over any other sequestration, except a sequestration issued before the date of the order of adjudication by or on behalf of a person who, at the time of issue thereof, had not notice of an act of bankruptcy committed by the bankrupt, and available against him for adjudication. But the sequestrator shall allow out of the profits of the benefice to the bankrupt, while he performs the duties of the parish or place, *such an annual sum* payable quarterly as the bishop of the diocese shall direct; and the bishop may appoint to the bankrupt such stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident (s. 88).

(215.) *Does any portion of the pay, half-pay, or pension of the bankrupt vest in the trustee?*

Where the bankrupt is or has been an *officer of the army* or *navy*, or an officer or *clerk in the civil service*, or is in the enjoyment of any pension or compensation granted by the Treasury, the trustee during the bankruptcy, and the registrar after the close of the bankruptcy, shall receive for distribution amongst the creditors, *so much* of the bankrupt's *pay, half-pay, salary, emolument or pension* as the Court, upon the application of the trustee, *thinks just* and *reasonable*, to be paid in such manner and at such times as the Court, *with the consent in writing* of the chief officer of the department under which the pay, half-pay, salary, emolument, pension, or compensation is enjoyed directs (s. 89).

And by sect. 90, where the bankrupt is in receipt of *any other salary* or *income*, the Court, upon application to the trustee, shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar, if necessary, after the close of the bankruptcy, to be applied by him in such manner as the Court may direct (see also rules 180–182).

(216.) *Upon a sale by the trustee of the bankrupt's book-debts, in whose name may the purchaser sue for them?*

In his own name. (Robson's Bankruptcy, 3rd ed. 340; see also *Kitson* v. *Hardwick*, L. R. 7 C. P. 473.)

(217.) *What are the provisions of the Bankruptcy Act*, 1869, *as regards voluntary settlements, and are different classes of persons differently affected by those provisions?*

Any voluntary settlement of property made by *a trader*, with the exception of a settlement made on or for his wife, or children, of property which has accrued to him after marriage in right of his wife, shall, if the settlor become bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt's estate appointed under the Act; and if the settlor become bankrupt at any subsequent time within ten years after the date of such settlement, it is also to be void against such trustee, unless the parties claiming thereunder can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement (s. 91).

(218.) *If a voluntary settlement be made by a person who at the time of making it is more than solvent, and in course of business pays off his then existing debts, but contracts new ones, and fails in fifteen months, can the settlement be sustained against his creditors?*

See last answer.

(219.) *Is a voluntary settlement valid in case of the bankruptcy of the settlor, and if so under what condition?*

Any *voluntary* settlement of property made by a *trader* within two years before bankruptcy is void against the trustee if not made—

(i.) Before and in consideration of marriage.

(ii.) in favour of the wife or children of the settlor of property accrued to him after marriage in right of his wife, and any such settlement made within ten years of the bankruptcy is invalid, unless the parties claiming thereunder can prove that the settlor was at the time of making such settlement solvent apart from the property settled. And by *ex parte Dawson, in re Dawson*, this section has been constituted retro-active.

(220.) *A trader, in consideration of marriage, covenants to settle on his wife and children all property which may devolve on him under his father's will. He marries in the lifetime of his father, under whose will he is entitled to real and personal estate. The father dies, and subsequently, but before any property has been actually transferred or paid to the trustees of the settlement, the trader becomes bankrupt. Are the trustees of the settlement entitled, as against the trustee in bankruptcy, to the real or personal estate devised and bequeathed?*

Having regard to the case of *ex parte Bishop, in re Tönnes*, L. R. 8 Chan. App. 721, the covenant would appear to be void as against the trustee in bankruptcy, and any property which might be realised would be divisible amongst the creditors.

(221.) *What provisions are made under the present Bankruptcy Act for the appropriation of the pay, emoluments, or pension of any officer who is, or has been, in the Army, Navy, or Civil Service, and who may become bankrupt?*

In such cases the trustee, during the bankruptcy, and the registrar, after the close of the bankruptcy, is to receive for distribution amongst the bankrupt's creditors so much of his pay, &c., as the Court, upon the application of the trustee, thinks just and reasonable, to be paid in such manner and at such times as the Court, with the consent in writing of the chief officer of the department under which the pay, &c., is enjoyed, directs (s. 89). See also s. 90, and rules 180–2.

(222.) *Within what period or periods can a voluntary settlement be impugned by the trustee under the bankruptcy of the settlor?*

Within *two years*; but if the settlor becomes bankrupt within *ten years* after the date of such settlement, unless the parties claiming thereunder can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, it will be void against the trustee.

(223.) *Can trustees of a marriage settlement prove in a husband's estate in respect of his covenant to bring money into settlement after marriage?*

By sect. 91 any *covenant or contract* made *by a trader* in consideration of marriage for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife shall, upon his becoming bankrupt (before such property or money has been actually transferred or paid pursuant to such contract or covenant) be void as against his trustee appointed under the Act. But under the old Acts, see the cases of *ex parte M'Burnie's Trustees*, 1 D. M. & G. 441; and *ex parte Gonne, in re March*, 3 Mo. & A. 166, in both of which cases the settlement also extended to certain property belonging to the intended wife.

(224.) *Where a debtor before his bankruptcy has covenanted for payment of a sum of money to a trustee, to be held when paid upon trusts under which the debtor takes a reversionary interest, can the trustee prove for the whole amount, or must he deduct the value of the debtor's interest?*

Where a bankrupt has covenanted to pay money of a settlement

and has failed to do so, having regard to the cases as cited in Robson's Bankruptcy, 3rd ed. 272, it would seem that the dividends upon the whole interest of the debtor will be proved for by the trustee in order to make good his breach of trust to the *cestuis que trust.*

(225.) *A trader by a settlement executed in contemplation of marriage, covenanted to pay the trustees of the settlement a sum of money by instalments on certain specified dates. The settlor became bankrupt before all the payments were made; what effect has the bankruptcy on his covenant to pay?*

The debt is one provable under the bankruptcy for the instalments remaining unpaid, and therefore the settlor would be discharged therefrom. (*Ex parte Bishop, in re Tonnies,* L. R. 8 Chan. App. 718.) It is also void by the 91st section of the Act, 1869.

(226.) *Explain the meaning of the term "settlement" as made use of in this Act.*

By the same section the word "*settlement*" shall for the purposes of such section include *any conveyance* or *transfer* of property.

(227.) *What is a fraudulent preference?*

Any conveyance or transfer of property, or any act done or suffered by any person unable to pay his debts, with a view of giving any particular creditor a preference over his other creditors, provided the same be done voluntarily and without pressure on the part of the creditor (s. 92).

(228.) *What is the effect of a fraudulent preference, and is it an act of bankruptcy?*

If the person making, taking, paying or suffering the same become bankrupt within *three months* after date, it is deemed

fraudulent and *void* as against the trustee of the bankrupt. This three months is to be reckoned backwards from the adjudication and not from the act of bankruptcy, *in re Gross*, 14 Sol. Jour. 96. But the rights of a purchaser, payee or incumbrancer in good faith and for valuable consideration shall not be affected (s. 92).

A *fraudulent preference* is an act of bankruptcy, as it is a fraudulent gift or transfer within the meaning of the 6th section of the Act. (*Ex parte McLean, in re Allibon*, 24 L. T. N. S. 144; see also *Gates* v. *Fabian*, 19 W. R. 61.)

(229.) *What are the conditions required by "The Bankruptcy Act*, 1869," *to constitute a fraudulent preference?*

By sect. 92, every such conveyance or transfer of property, &c., in favour of any creditor, or any person in trust for any creditor, with such a view is to be deemed fraudulent and void, as against the trustee of the bankrupt, if the person making, &c., the same become bankrupt within three months after the date thereof.

It must be a delivery of property not in the ordinary course of business, without any pressure or demand on the part of a creditor. (*Inns of Court Hotel*, L. R. 6 Eq. 90.) It must be shown also that the trader was insolvent at the time he made it, and that he then contemplated bankruptcy, *ex parte Craven*, L. R. 10 Eq. 648. A fraudulent preference in contemplation of bankruptcy may be inferred by a jury from circumstances. (See also *ex parte Cooper, in re Zuccho*, L. R. 10 Chan. App. 570.)

(230.) *Explain the term "Fraudulent Preference," and state some circumstances which will render a payment made to a creditor shortly before bankruptcy a fraudulent preference.*

For former part of question see *supra*. As to the latter portion *vide* the cases of *ex parte Wreford, in re Collett*, 24 L. T. N. S. 638; *ex parte Halliday, in re Liebert*, L. R. 8 Chan. App. 283.

(231.) *An agent, very shortly before stopping payment, and less*

than three months before bankruptcy, pays his principal a sum of money in the ordinary course of business. Is or is not such a payment a fraudulent preference within the 92*nd section of the Bankruptcy Act*, 1869?

It is not, if made without notice of the debtor's insolvency. (*Ex parte Blackburn, in re Cheesebrough*, L. R. 12 Eq. 358.) Robson's Bankruptcy, 3rd ed. 142.

(232.) *Does the Bankruptcy Act* (1869), *or do the general rules contain any provision expressly precluding the petitioning creditor from availing himself of the proceedings instituted by him as a means of extracting from the bankrupt the payment of his own debt or any security for it in preference to the other creditors?*

By sect. 92 it is provided that every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, or paying, or suffering the same, become bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the bankrupt appointed under this Act.

(233.) *The proviso of the* 92*nd sect. of the Bankruptcy Act*, 1869, *reserves the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration. Is a creditor fraudulently preferred a payee within the proviso? Give your reasons.*

He is not, *ex parte Butcher, in re Meldrum*, L. R. 9 Chan. App. 595, *S. C.* See also *ex parte Pearson, in re Mortimer*, L. R. 8 Chan. App. 667.

(234.) *Can any transactions be entered into with the bankrupt which are protected against the title of the trustee?*

(i.) Any *payment* made in *good faith* and for *value received to* such bankrupt.

(ii.) Any *payment* or *delivery of money* or *goods* belonging to a bankrupt, made to such bankrupt by a depository of such money or goods.

(iii.) Any *contract* or *dealing with any bankrupt* made in good faith and for valuable consideration.

Provided the above are made before the date of the order of adjudication and without notice of any act of bankruptcy (s. 94).

(235.) *Are there any transactions entered into by or in relation to the property of the bankrupt that are protected against the trustee?*

(i.) Any *disposition* or *contract* with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money or otherwise howsoever made by any bankrupt in good faith and for valuable consideration.

(ii.) Any *execution* or *attachment* against the land of the bankrupt executed in good faith by *seizure.*

(iii.) Any *execution* or *attachment* against the goods of any bankrupt *executed* in good faith *by seizure and sale.*

Provided the above are made before the date of adjudication and without notice of an act of bankruptcy (s. 95).

(236.) *How does the bankruptcy of a vendor affect a contract for sale of land, the like as to the bankruptcy of the purchaser?*

By 32 & 33 Vict. c. 71, ss. 94, 95, in the case of the bankruptcy of the vendor, the trustee is bound to carry out the sale, supposing of course the contract be made without notice of the act of bankruptcy, and before the date of the order of adjudication and in the event of the bankruptcy of the purchaser, if the

contract was made in good faith, it would also be binding on the vendor, but might be disclaimed by the trustee, under s. 23. (See also *ex parte Barrell, in re Parnell*, L. R. 10 Chan. App. 512.)

(237.) *What conditions are necessary to the validity of a disposition of property by a bankrupt after an act of bankruptcy?*

Good faith, valuable consideration, and must have been made before the adjudication and without notice of the act of bankruptcy.

(238.) *Where one member of a partnership firm is adjudged bankrupt what steps should be taken, and by whom, for recovery of debt due to the partnership?*

The trustee of the bankrupt partner should apply to the Court, and the Court, with the consent of the creditors, certified by a *special* resolution, may authorise him to commence and prosecute any action or suit in the names of the trustee and of the bankrupt's partner for the recovery of such debts, and any release by such partner of the debt to which any action relates will be void. Notice of the application should be given to the insolvent partner, and he may show cause against it, and on his application the Court may if it thinks fit direct that he shall receive his proper share of the proceeds of the action or suit, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs (s. 105).

(239.) *On the bankruptcy of one member of a firm, what consequences ensue? How are the partnership assets and liabilities dealt with?*

It becomes necessary to take an account of the whole state of the partnership affairs, in order to ascertain what is to be administered (Smith's Merc. Law, 8th ed. p. 606), and any balance which may be due to the bankrupt should be paid over to the trustee of his estate.

By sect. 103, if one partner of a firm is adjudged bankrupt, any creditor to whom he is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and is to be entitled to vote thereat, but is not to receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their debts.

If the firm be also insolvent and adjudicated bankrupt, any overplus of the bankrupt's separate estate is to be carried to the account of the joint estate (rule 76).

X.—The Dividend.

(240.) *Who is to declare a dividend, and within what time shall such dividend be declared?*

The *trustee* shall from *time to time*, when the committee of inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly. And in the event of his not declaring a dividend for the space of *six months* he shall summon a meeting of the creditors and explain to them his reasons for not so doing (s. 41). And by rules 131 and 132, the trustee shall give reasonable notice of such dividend to the creditors mentioned in the bankrupt's statement, and the notice shall be also gazetted, and notice of a dividend having been declared it shall be gazetted by the trustee and sent to each creditor who has proved, showing the amount of the dividend and when and where it is payable.

(241.) *When is the final dividend to be declared?*

When the trustee has *converted into money all the property of the bankrupt*, or so much thereof as can in the joint opinion of himself and the committee of inspection be realised without need-

lessly protracting the bankruptcy, he shall declare a *final dividend*, and give notice of the time when it is to be distributed (s. 44).

(242.) *What proceedings must be taken by a creditor to enforce payment of his dividend?*

By sect. 46 of the Act *no action or suit* for a dividend shall lie against the trustee; but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order the trustee to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld, and the costs of the application; and by rule 135 the creditor may apply for payment by sending or giving to the registrar and the trustee a notice according to the form in the schedule, and the Court may, if it shall see fit, make an order upon such application for payment without requiring the attendance of the creditor thereat.

(243.) *A. is the trustee of B.'s estate; he has declared and paid dividends to the amount of 6s. in the pound on B.'s estate, but has omitted to pay a dividend to C., a creditor, whose debt was proved, and who was entitled to such dividend. Will an action lie at the suit of C. against A., and if not, what is the remedy, and can C. recover interest?*

No action will lie. The creditor should send or give the registrar or trustee notice in the prescribed form (No. 50), upon which the Court, if it thinks fit, can make an order for payment of the dividend, with interest at the rate of 5*l.* per cent. from the time that its payment has been withheld, together with costs (s. 46; rule 135, F. 50.)

(244.) *What provision is made for creditors residing at a distance?*

In the calculation and distribution of a dividend it shall be obligatory on the trustee to *make provision for debts provable* in

bankruptcy appearing from the bankrupt's statements or otherwise to be *due to persons resident in places so distant* from the places where the trustee is acting that in ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined (s. 42).

(245.) *What is the position of a creditor who has not proved his debt before declaration of a dividend?*

He is *entitled to be paid* out of any moneys for the time being in the hands of the trustee, any dividend or dividends he may have failed to have received *before* such moneys are made applicable to the payment of any *future dividend* or dividends, but he shall not be entitled *to disturb* the distribution of *any dividend* declared *before* his debt was proved by reason that he has not participated therein (s. 43).

(246.) *In the administration of joint and separate properties, is there any distinction as to the declaration of the dividends?*

Dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, *be declared together;* and the *expenses* incident to such dividends shall be *fairly apportioned* by the trustee between the joint and separate properties, regard being had to the work done for, and the benefit received by, each property (s. 104).

(247.) *What is the duty of the trustee as to unclaimed dividends and outstanding property?*

They are to be accounted for and *paid over* to such account as may be directed by the rules of the Court to be made with the sanction of the Treasury, and any parties entitled thereto may claim the same in manner directed by such rules. The trustee

shall also *deliver a list* of any *outstanding property* of the bankrupt to the prescribed persons, and the same shall, when practicable, be *got in and applied* for the benefit of the creditors in the manner prescribed (s. 52).

(248.) *After the expiration of what period in the case of non-claim of dividends will they be deemed forfeited?*

Where any dividends remain unclaimed for *five years* the same shall be deemed *vested in the Crown*, and shall be disposed of as the Commissioners of Her Majesty's Treasury direct; provided that at any time after such vesting the Lord Chancellor, or any Court authorised by him, may by reason of the *disability* or *absence beyond seas* of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the said sum *shall be repaid* out of money provided by Parliament (s. 116). See also 38 & 39 Vict. c. 77, s. 32.

XI.—The Bankrupt, his Rights, Duties, Liabilities, and Discharge.

(249.) *State shortly the rights of the bankrupt.*

By sect. 20 the bankrupt, *if aggrieved* by any act of the trustee, *may apply to the Court*, and the Court may confirm, reverse, or modify the act complained of.

By sect. 26 of the Act the trustee may appoint *the bankrupt himself to superintend* the management of the property, or carry on the trade, if any, for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

By sect. 28 the trustee may, with the sanction of a *special* resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, *accept any composition offered by the bankrupt*, and if the Court approves of

such composition it will annul the adjudication where the annulling the order of adjudication is made the condition of the composition; the provisions of which composition may be enforced by the Court *on motion* made in a summary manner.

By sect. 38 the trustee, with the consent of the creditors testified by a resolution passed in general meeting, may, from time to time during the continuance of the bankruptcy, *make such allowance as may be approved* by the creditors of the bankrupt out of his property *for the support of the bankrupt and his family*, or in consideration of his services if he is engaged in winding up his estate.

By sect. 45 the bankrupt shall be entitled *to any surplus* remaining after payment of the creditors and of the costs, charges, and expenses of the bankruptcy. And by rule 137, after payment of debts in full and interest at the rate, and in order following, viz., all creditors whose debts by law carry interest shall first receive interest at the rate reserved or by law payable, from the date of the order of adjudication, and next all creditors who have proved, at the rate of 4*l.* per cent.

And by sect. 48 when the bankruptcy *is closed* or at any time *during its continuance* with the assent of the creditors testified by a special resolution, the bankrupt may *apply to the Court* for his *order of discharge.*

(250.) *State shortly the duties of the bankrupt.*

By sect. 19 the bankrupt shall, to the utmost of his power, *aid in the realisation of* his property *and the distribution* of the proceeds amongst his creditors. He shall produce *a statement of his affairs to the first meeting* of creditors and shall be publicly examined thereon on a day to be named by the Court, subject to adjournments. He shall give *such inventory* of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, *submit to such examination* in respect of his property or his creditors, *attend such meetings* of his creditors, wait

at such times on the trustee, *execute such powers of attorney, conveyances, deeds and instruments,* and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders, made in reference to any particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor.

(251.) *State shortly the liabilities of the bankrupt.*

By the second portion of the above section if the bankrupt wilfully fail to perform the duties imposed on him by the above section, or if he fail to deliver up possession to the trustee of any part of his property which is divisible amongst his creditors under this Act, and which may for the time being be in the possession or under the control of such bankrupt, he shall, in addition to any other punishment to which he may be subject, be *guilty of a contempt of Court,* and may be *punished* accordingly. *He* or *his wife* is also liable to be *summoned before the Court* to give information respecting his property, and to *produce documents,* and under certain circumstances the bankrupt is liable to be *arrested* and his effects seized, which latter points are more fully treated of hereafter.

(252.) *Has the Court any power over post letters addressed to the bankrupt?*

The Court, upon the application of the trustee, *may* from time to time order that for such time as the Court thinks fit, not exceeding *three months* from the date of the order of adjudication, *post letters addressed to the bankrupt* at any place or any of the places mentioned in the order shall be re-directed, sent, or delivered by the Postmaster General, or the officers acting under him, to the trustee, or otherwise as the Court directs (s. 85).

(253.) *What power of discovery has the Court as to a bankrupt's property?*

The Court may, on application of the trustee, at any time after an order of adjudication has been made against a bankrupt, *summon before it the bankrupt, or his wife, or any person* whatever known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or any person whom the Court may deem capable of giving information respecting the bankrupt, his trade dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property; and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination (s. 96). See also *ex parte Bolland, in re Holden*, L. R. 19 Eq. 131.

By sect. 97 the Court also may *examine upon oath*, either by word of mouth or by written interrogatories, *any person* so brought before it in manner aforesaid, concerning the bankrupt, his dealings or property.

(254.) *A trustee in bankruptcy has reason to suspect that property of the bankrupt is in the possession of B., with whom the bankrupt has been engaged in business transactions. Is there any, and what, summary method by which the trustee can obtain discovery and payment from B.?*

Yes, by summoning B. before the Court and proceeding under ss. 96-8.

(255.) *What power has the Court over any person known or*

suspected to have in his possession any of the estate or effects of a bankrupt?

By sect. 96, the Court may, on application of the trustee at any time after an order of adjudication has been made against a bankrupt, *summon before* it the bankrupt or his wife, or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, &c. &c.

(256.) *If the chattels of the bankrupt are in the possession of a third person, how should the trustee proceed to recover them?*

He should summon the person retaining the same before the Court (s. 96).

(257.) *What power has the Court over a bankrupt who is a trustee under the "Trustee Act*, 1850."

The Court has authority to appoint a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears to it expedient to do so.

(258.) *Is the property of the bankrupt liable to seizure under any circumstances?*

Any person acting under *warrant of the Court may seize* any property of the bankrupt divisible amongst his creditors under this Act, and in the bankrupt's custody or possession, or in that of any other person; and with a view to such seizure, may *break open any house, building, or room* of the bankrupt where the bankrupt is supposed to be, or *any building or receptacle* of the bankrupt where any of his property is supposed to be; and when the Court is satisfied that there is reason to believe the property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a *search warrant* to any constable or to such officer of the London Court of Bankruptcy or to such High Bailiff of any County Court, whether such County

Court has jurisdiction in bankruptcy or not, as the Court may in each case direct (s. 99; rule 176).

(259.) *Under what circumstances can a debtor about to quit the country be arrested, and for what purpose?*

See last answer.

(260.) *Under what circumstances is the bankrupt liable for arrest?*

The Court may, by *warrant addressed to* such person as aforesaid, cause a debtor to be arrested, and any *books, papers, moneys, goods* and *chattels,* in his possession, to be seized, and him and them to be safely kept, as prescribed, until such time as the Court may order under the following circumstances:—

(i.) If, after a petition of bankruptcy is presented against such debtor, it appear to the Court that there is a probable reason for believing *that he is about to go abroad* or *to quit his place of residence* with a view of *avoiding service of the petition,* or appearing thereto, or examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy.

(ii.) That he is about to *remove his goods or chattels* with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing *that he has concealed or is about to conceal or destroy* any of his goods or chattels, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy.

(iii.) If, after the service of the petition, or *after adjudication, he remove any goods or chattels* in his possession *above* 5*l. without* the leave of the trustee, or if, without good cause shown, *he fails to attend* any examination order by the Court (s. 86).

(261.) *When is a bankruptcy to be deemed closed, and what is necessary to be done to effect that object?*

When all the bankrupt's property has been realised for the

benefit of his creditors, or so much thereof as can in the joint opinion of the trustee and committee of inspection be realised, without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustee should make a report to the Court to the above effect, and the Court will then, if it is satisfied as to its correctness, make an order that the bankruptcy has closed, which will take effect from the date thereof. This order should be inserted in the *London Gazette*, the production of a copy of which will be conclusive evidence of the order having been made, its date and contents (s. 47). It may be mentioned that the above provision does not apply to liquidations by arrangement, section 125, sub-section 9, but they must be closed by resolution of creditors. *In re Bennett's Trusts*, L. R. 19 Eq. 245.

(262.) *When and under what circumstances is a bankrupt entitled to an order of discharge?*

By sect. 48, at the close of the bankruptcy, or at any time during its continuance with the assent of the creditors, testified by a special resolution.

The bankrupt is not entitled to it unless,

(i.) Either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid, except through the negligence or fraud of the trustee; or

(ii.) That a special resolution of his creditors has been passed to the effect that his bankruptcy, or the failure to pay ten shillings in the pound, in their opinion arose from circumstances for which he cannot be held responsible, and that they desire that an order of discharge should be granted to him. (As to the procedure to obtain it, see rules 140–142 and 172. See also Robson's Bankruptcy, 3rd ed. 456.)

(263.) *If he fails so to get it, can he obtain it by the aid of the creditors, and how?*

He can, by the creditors passing a special resolution to the effect that his bankruptcy, or the failure to pay 10*s.* in the pound, has in their opinion arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him (s. 48).

(264.) *Under what circumstances may the Court suspend or withhold altogether the order of discharge?*

By the above section: (i.) If it appears to the Court on the representation of the creditors, made by *special resolution*, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the bankrupt *has made default in giving up to his creditors* the property which he is required by the Act to give up; or

(ii.) *That a prosecution* has been commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors contained in the Debtors Act, 1869, in respect of any offence alleged to have been committed by him against the Act; the Court may *suspend* for such time as it seems just, or withhold altogether the order of discharge.

(265.) *What is the effect of an order of discharge?*

An order of discharge *shall not release* the bankrupt from *any debt or liability* incurred by *means of any fraud* or breach of trust, nor from *any debt* or *liability* whereof he has obtained forbearance by *any fraud*. But it will release the bankrupt from all other debts provable under the bankruptcy, with the exception of those mentioned in the 2nd and 3rd paragraphs of the next answer.

The order of discharge shall be sufficient evidence of the bankruptcy and of the validity of the proceedings thereon; and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which

he is released by such order, the bankrupt may *plead that the cause of action* occurred *before* his discharge, and may then give the Act and special matter in evidence (s. 49). (See also *Ebbs* v. *Boulnois*, L. R. 10 Chan. App. 479; *ibid.* 490.)

(266.) *Are there debts and liabilities of a bankrupt from which his order of discharge will not release him? and if so, specify them.*

(i.) Debts or liabilities incurred by means of fraud or breach of trust, or whereof he has obtained forbearance by means of fraud.

(ii.) Debts due to the Crown.

(iii.) Debts incurred by any offence against statutes relating to the revenue, or on bail-bonds entered into by him for the appearance of any person charged therewith, unless discharged by the Treasury Commissioners in writing.

(267.) *Is an undischarged bankrupt, whose bankruptcy has been closed, entitled to property acquired by him subsequently to the close of the bankruptcy?*

He is. *In re Pettit's Estate*, 1 Chan. Div. 478; see also sect. 54 of the Bankruptcy Act, 1869; and Robson's Bankruptcy, 3rd ed. 368.

(268.) *Where a creditor, who has proved his debt and received dividends, discovers that it has been fraudulently incurred, has he any remedy against the debtor left him, or is he bound by his proof?*

Sect. 49 of the Bankruptcy Act enacts, that an order of discharge is not to release a bankrupt from any debt or liability incurred by means of any fraud or breach of trust, and by sect. 15 of the Debtors Act, 1869, where a debtor makes any arrangement or composition with his creditors under the provisions of the Bankruptcy Act, 1869, he is to remain liable for the unpaid

balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

(269.) *Is there any exception in the case of joint debtors?*

By sect. 50 the order of discharge shall *not* release any person who, at the date of the order of adjudication, *was a partner* with the bankrupt, or was *jointly bound*, or had made any joint contract with him; and by section 112, in the case of the bankruptcy of a joint contractor, the other contractor can be sued in respect of the joint contract without the joinder of the bankrupt.

(270.) *One member of a firm is alone made bankrupt. How does his discharge affect the liability of the other partners as joint contractors, and, in action against them, is it necessary to join the bankrupt as co-defendant?*

The effect of an order of discharge where one member of a firm only is adjudicated bankrupt, is to release *him* from all his liabilities, joint as well as separate. But it will not release any person who at the date of the order of adjudication was a partner with the bankrupt, or was jointly bound, or had made any joint contracts with him. (*Ex parte Hammond, in re Hammond and Nevard*, L. R. 16 Eq. 614.)

(271.) *What is the position of an undischarged bankrupt after the close of his bankruptcy?*

(i.) No portion of a debt provable under the bankruptcy is enforceable against the bankrupt's property until the expiration of three years from the close of the bankruptcy, and if during that time he pay to his creditors such additional sum as will, together with the dividend paid under his bankruptcy, make up ten shillings in the pound, he is entitled to an order of discharge.

(ii.) At the expiration of the three years, if he has not obtained an order of discharge, any balance remaining unpaid upon any debt proved in the bankruptcy (but without interest in the meantime) is to be deemed a subsisting debt in the nature of a judgment debt, and, by the sanction and direction of the Court, enforceable as such, subject to the rights of any persons who have become creditors of the bankrupt since the close of his bankruptcy.

(272.) *For what period is the property of a bankrupt, who has not obtained his discharge, protected as regards debts provable under the bankruptcy, and to what extent and in what manner may such debts be enforced against his property at the expiration of such period?*

Three years from the close of the bankruptcy.

At the expiration of such period any balance remaining unpaid in respect of any debt proved in the bankruptcy, but without interest in the meantime, is deemed to be a *subsisting* debt in the nature of a *judgment* debt, and subject to the rights of any persons who may have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the debtor with the sanction of the Court which adjudicated such debtor bankrupt, or of the Court having jurisdiction in bankruptcy in the place where the property is situated; but to the extent only and at the time and in manner directed by such Court. (See also rules 183–5.)

(273.) *Under what circumstances will debts incurred by the bankrupt subsequently to his bankruptcy have priority over debts proved under the bankruptcy?*

Where, at the expiration of three years from the close of the bankruptcy, the bankrupt has not obtained an order of discharge, but has traded and acquired property, the rights of the persons

who have become creditors of the debtor since the close of the bankruptcy will be preferred to any balance remaining unpaid in respect of any debt proved in such bankruptcy. As to any such subsequent property: see *in re Pettit's Trusts, cited ante,* and *Ebbs* v. *Boulnois, ibid;* also "The Bankruptcy Act, 1869," sect. 54.

(274.) *What is the effect of the death of a bankrupt on the proceedings in his bankruptcy?*

If the debtor dies after adjudication the Court may order that the proceedings be continued as if he were alive (s. 80). As to death of debtor before the first meeting and appointment of trustee in liquidation proceedings, see *in re Obbard,* 24 L. T. R., N. S. 145.

(275.) *When an adjudication in bankruptcy has been annulled what is the effect upon sales and dispositions made by the trustee of property of the debtor adjudged bankrupt, and in whom does the unsold property of such debtor vest?*

All such sales and dispositions are valid. The unsold property vests in such person as the Court may appoint, or in default of such appointment it reverts to the bankrupt upon such terms, and subject to such conditions, if any, as the Court by order may declare (s. 81).

(276.) *If an uncertificated bankrupt pay away money in the ordinary course of business, can or cannot such money be followed in the hands of the payee?*

It was decided in the case of *ex parte Dewhurst, in re Vanlohe,* L. R. 7 Chan. App. 185, that money received by an undischarged bankrupt and paid away for value cannot be followed by the trustee, though the person to whom the money was paid had notice of the bankruptcy.

(277.) *Does property acquired by a bankrupt after he obtains an order of discharge, and before the close of the bankruptcy, vest in the trustee, or belong to the bankrupt?*

It belongs to the bankrupt. (*Ebbs* v. *Boulnois, cited ante,* overruling *in re Bennett's Trusts,* L. R. 19 Eq. 245.) See also *Webb* v. *Fox,* 7 T. R. 391, deciding that the bankrupt may also sue in respect of rights of action founded on contract accruing to him after and during the continuance of the bankruptcy unless and until the trustee interposes. (Robson's Bankruptcy, 3rd ed. 584.)

XII.—Liquidation by Arrangement, Composition, &c.

(278.) *A debtor and the majority of his creditors agree in wishing his estate to be liquidated by arrangement. Can they, and by what means, bind the dissentient creditors, and what majority is requisite?*

See next answer.

(279.) "*The Bankruptcy Act,* 1869," *contains provisions enabling a debtor unable to pay his debts to arrange his affairs without becoming bankrupt; state shortly the nature of these provisions and the course to be pursued?*

By sect. 125 of the Act, paragraph 1, a debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may, by a special resolution as defined by the Act (sect. 16, clause 8), declare that his affairs are to be liquidated by arrangement and not in bankruptcy, and may at that or some subsequent meeting held at an interval of not more than a week appoint a trustee with or without a committee of inspection.

By sect. 126 they may without any proceedings in bankruptcy, by an extraordinary resolution as defined by the sect. (clause 2),

resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor.

The debtor should present a petition, either to the London Court of Bankruptcy, or the proper local county court, having bankruptcy jurisdiction, and upon this, together with the affidavit in support, naming a convenient place for a first general meeting, being filed, such meeting will be duly summoned. As to how this is done, see Gen. rules, 255 and 256. The notice for the *London Gazette* referred to in rule 257, must also at the same time be delivered to the registrar in duplicate, and be gazetted by the debtor seven days at least prior to the meeting.

As to the proceedings at the first general meeting, see Gen. rules 85, 93, 94, 114, 268, 269, 271, 274, etc.

By Gen. rules 282 and 284, the resolutions, proofs, and debtor's statement must be filed within three days of the first meeting, but the time may be extended by an order.

If a composition be accepted a request for a second meeting is left with the registrar, together with a list of creditors and notices duly stamped as on first meeting, those to creditors not present at first meeting being stamped with registration fee. This meeting does not, like the first one, require advertising in the *Gazette*.

As to cases in which in liquidation a second meeting is held by adjournment, etc., see Gen. rules 93 and 277.

By Gen. rule 274 the debtor's statement must be produced at all meetings.

(280.) *How is the amount of duty payable on the presentation for registration of a special resolution under section* 125 *to be ascertained?*

By General Order of 10th August, 1871, by stamps denoting a duty computed at the rate of 5*s.* upon £100 or fraction of £100 on the gross amount of the estimated assets not exceeding a total duty of £200; and in the case of *in re Berger*, 21 W. R. 883,

it was decided that the stamp must be on the amount of assets as stated by the debtor and not on the value as estimated by the trustee, and if the assets exceed the debts the stamp is payable only on so much as is sufficient to pay the debts. (*Ex parte Murray*, L. R. 16 Eq. 215.)

(281.) *What is the course of proceeding with respect to the liquidation by arrangement of the affairs of a debtor, and how can the debtor under such proceeding obtain a discharge as against dissentient creditors?*

A petition is filed, together with an affidavit verifying the same, the place of meeting advertised in the *Gazette*, and the list of, and notices to creditors brought in to the registrar duly stamped. The debtor should be present at the meeting, and should produce a statement thereat showing the whole of his assets and debts, names and addresses of creditors. A special resolution having been passed at the meeting, and duly registered subsequently, the close of the liquidation may be fixed, the discharge of the debtor and the release of the trustee granted by a special resolution. The trustee reports to the registrar the discharge of the debtor and a certificate of such discharge given by the registrar has the same effect as an order of discharge given to a bankrupt under the Act. In a case of composition an extraordinary resolution is necessary.

(282.) *When is a debtor whose affairs are under liquidation entitled to his discharge?*

Where liquidation by arrangement and not in bankruptcy has been resolved on, the creditors may at the same meeting at which such resolution is passed resolve whether the debtor's discharge shall be granted either forthwith or at a date to be specified in the resolution; in default of any resolution being then come to as to the debtor's discharge, a general meeting must be summoned

for the purpose of considering the grant thereof, either when the trustee shall see fit, or when the committee of inspection (if any,) or when the debtor with the concurrence of one-fourth in value of his creditors who have proved, shall require the trustee to summon the same. The resolution come to at the meeting must then be reported to the registrar, and if satisfactory to such debtor the registrar gives him a certificate of discharge. (Rules 302, 303.)

(283.) *By what means can a person in insolvent circumstances obtain a discharge from his liabilities?*

A man cannot now, as formerly, be made bankrupt upon his own petition; but upon his committing any one or more of the acts of bankruptcy specified in sect. 6 of the Act his creditor or creditors may present a petition, and at the close of the bankruptcy the bankrupt may apply to the Court for an order of discharge, which will be granted if it be proved to the Court that one of the conditions referred to in sect. 48 of the Act has been fulfilled.

Another mode of obtaining a discharge from liabilities is by proceeding under the sections in the Act regulating the proceedings for liquidation by arrangement and composition with creditors, viz. ss. 125–7.

(284.) *A., a trader, has presented his petition for liquidation by arrangement under sect.* 125 *of the "Bankruptcy Act,* 1869," *and is threatened by an execution by a judgment creditor. Is there any, and what, mode (previously to the meeting of the creditors) of protecting his property from being taken in execution?*

Yes, by applying for a restraining order, and, if necessary, also, for the appointment of a receiver or manager. (Gen. rule 260.)

(285.) *A., B., and C., partners, file a petition for arrangement*

or composition. What is the rule regulating the meetings of their creditors?

Separate meetings of the different classes of creditors must be held thus:—A meeting of the joint creditors of A., B., and C. must first be held, and separate meetings of the separate creditors must be held at a date or time subsequent to the meeting of the partnership creditors. The joint creditors may come to such resolution as they may think fit, with regard to the joint estate, and the separate creditors as regards the liquidation of the estate of their individual debtor, but in the event of their determining on his bankruptcy, or the liquidation of his estate by arrangement, they must choose the same trustee (if any) as has been or shall be appointed by the joint or partnership creditors. (Robson's Bankruptcy, 3rd ed. 707, 708; see also rule 285.)

(286.) *State shortly the steps to be taken by a debtor who is desirous that his affairs should be liquidated by arrangement.*

See answer to question 279.

(287.) *What is the mode of proceeding to be adopted by a debtor who is desirous that his affairs shall be liquidated by arrangement or composition and not in bankruptcy?*

He should present a petition either to the London Court of Bankruptcy or the proper local county court having bankruptcy jurisdiction, whereupon a general meeting of his creditors will be summoned (this meeting must be held within one month after presentation of petition), who may, by special resolution, declare that his affairs shall be liquidated by arrangement, and not in bankruptcy. (Gen. rules, 253 *et seq.*)

(288.) *What proportion in number and value of the creditors is sufficient to carry a resolution that the affairs of a debtor shall be liquidated by arrangement and not in bankruptcy?*

A majority in number, and three-fourths in value, of the

creditors present personally or by proxy and voting at the meeting. In calculating the majority, creditors whose debts amount to sums not exceeding 10*l.* are to be reckoned in the majority in value, but not in number.

(289.) *By what means other than bankruptcy can a debtor obtain a discharge from his debts?*

By liquidation by arrangement, and by composition with creditors.

(290.) *What effect upon an act of bankruptcy, upon which a debtor has been adjudicated bankrupt, has the subsequent passing and registration of a resolution for a composition?*

The order of adjudication may be annulled if the creditors so determine, and it is embodied in the special resolution. But if the annulling is no part of the arrangement, the Court is to make an order that the bankruptcy has closed and it will be deemed to have closed at and after the date of such order. Act 1869, s. 47. (See Robson's Bankruptcy, 3rd ed. 562.)

(291.) *What are the relative advantages and disadvantages to a debtor arising from proceedings in bankruptcy, or by liquidation by arrangement?*

In liquidation by arrangement the debtor can himself originate the proceedings, and can obtain his discharge by the act of the creditors alone without the intervention of the Court.

In bankruptcy, however, the debtor cannot get his discharge without the sanction of the Court, and this cannot be obtained unless either a dividend of 10*s.* in the pound has been paid out of his property, or might have been paid, except through the negligence or fraud of the trustee, except by special resolution, and on their request that a special resolution should be granted.

(292.) *What courses are open to creditors under a liquidation*

petition? By what number or amount of creditors must a special resolution be carried, and what is the consequence of no resolution being passed?

At the meeting they may determine whether the affairs of the debtor shall be liquidated by arrangement and not in bankruptcy, or may reject such proposition. The special resolution must be carried by a majority in number and three-fourths in value of the creditors present, personally or by proxy, and voting at the meeting, and in the event of no such resolution being passed, the Court may, on the application of any of the creditors, and after notice to the debtor, make an order of adjudication against the debtor, or direct the bankruptcy to be proceeded with. (See also *ex parte James, in re Condon*, L. R. 9 Chan. App. 609, *S. C.*)

(293.) *Under what circumstances may the Court adjudge bankrupt a debtor whose estate is under liquidation by arrangement?*

If, in the opinion of the Court, the property of the debtor cannot be sufficiently protected by the exercise, or the appointment of a receiver or manager, or in consequence of legal difficulties arising, or there is no trustee appointed, &c. (Act 1869, s. 125, par. 12; Robson's Bankruptcy, 686 *et seq.*)

(294.) *In the case of a petition for liquidation by partners having joint and separate creditors, what meetings are necessary to carry out a composition by arrangement? State the periods at which such meetings must be held, and what notices to creditors are requisite?*

By rule 285, separate meetings of the different classes of creditors shall be held—i.e., of the joint and separate creditors. The meeting of the joint creditors shall be first held, and separate meetings of the separate creditors shall be held at a date or time subsequent to the meeting of the partnership creditors. (See *ante*, answer to question 285.) By rule 304, notice of general meetings

subsequent to the appointment of a trustee must be given to the creditors who have proved, stating the effect of the meeting, and the business proposed to be transacted thereat; and by rule 312, seven days at least before declaring any dividend under a liquidation by arrangement, a notice shall be gazetted by the trustee requiring the creditors to send to him their names and addresses, &c.

(295.) *Mention two or three essential points in which the proceedings in the liquidation of a debtor's affairs by arrangement differ from those in the administration of a debtor's estate in bankruptcy.*

(i.) The debtor may originate the proceedings.

(ii.) The discharge is by the act of the creditors alone, without the intervention of the Court. (Smith's Mercantile Law, 8th ed. 690.)

(296.) *What proceedings are necessary in order to obtain an extraordinary resolution of the creditors that a composition shall be accepted in satisfaction of the debts due to them from the debtor?*

A petition should be filed by the debtor under sect. 126, and a general meeting of his creditors summoned, at which an extraordinary resolution, viz., a resolution passed by a majority in number and three-fourths in value of the creditors assembled at such meeting, and confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner and held at an interval of not less than seven nor more than fourteen days from the date of the meeting at which such resolution was first passed may be passed by the creditors agreeing to accept a composition in satisfaction of the debts. This resolution, after being registered in the prescribed manner, upon production of the necessary affidavits, then becomes binding upon debtor and creditors.

(297.) *In what mode can an offer of composition with creditors be made binding upon non-assenting creditors?*

By proceeding under sect. 126, viz., filing a petition, and carrying and duly registering an extraordinary resolution.

(298.) *Where the majority of creditors, from motives of kindness to the debtor, pass a special resolution under sect.* 125, *beneficial to the debtor, which is duly registered, have the dissentient minority any, and what, remedy in bankruptcy?*

If the resolutions passed by the creditors are not bonâ fide for the benefit of the creditors, but are passed for the purpose of discharging the debtor, without any real benefit to the creditors, as if there are no assets to distribute, they will be invalid. But see also *ex parte Linsley, in re Harper,* 43 L. J. Bkcy. 84: there is an appeal from the decision of the registrar refusing or allowing the registration of a resolution, to the chief judge in the London Court. (*Ex parte Pooley, in re Russell,* L. R. 5 Chan. App. 723.)

(299.) *For the purposes of composition in calculating a majority, how are creditors to be reckoned whose debts are under* 10*l.*?

They are to be reckoned in the majority in value, but not in number.

(300.) *What are the first steps to be taken by a debtor desirous of arranging with his creditors by paying a composition?*

By virtue of sect. 126 he should obtain an *extraordinary resolution,* which resolution must be confirmed by a *majority in number and value of the creditors* assembled at a subsequent general meeting, properly convened and held within the prescribed time.

The debtor should attend both meetings, and produce a statement to the meetings similar to what is required in a case of

liquidation by arrangement. The *extraordinary resolution* and *the statement* should then be presented to the registrar as in cases of liquidation by arrangement, and should be registered. (See also rules 254–259 and 282.)

(301.) *What statements must a debtor produce to his creditors on a proposed liquidation by composition?*

He should produce a statement showing the whole of his debts and assets, and the names and addresses of the creditors to whom such debts respectively are due. The name of each creditor in such statement should be numbered consecutively, and the list of creditors whose debts do not exceed 10*l.* should be separated from and follow after the list of those creditors whose debts exceed that amount. The debtor's statement of affairs should be as near as may be in the form required in bankruptcy. (Gen. rules, No. 274.)

(302.) *Have the creditors any power to add to or vary the terms of such composition?*

The creditors *may*, by an *extraordinary resolution, add to or vary* the provisions of any composition previously accepted by them without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation, and any such extraordinary resolution shall be presented as above, and shall have the like effect as the extraordinary resolution in the first instance.

(303.) *Where the debt arises on a bill of exchange or promissory note, what statement will be required from the debtor, and what is the effect of a mistake in such statement?*

He shall be required, if ignorant of the holder of the bill or note, to state the *amount*, the *date* on which it falls due, the name of the *acceptor* or the *payee*, and any other particulars within

his knowledge respecting the same, and the insertion of such particulars shall be deemed a sufficient description of such *creditor*, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given with the consent of a general meeting of his creditors.

(304.) *How may the provisions of such composition be enforced, and under what circumstances may the Court adjudge the debtor a bankrupt?*

The provisions may be enforced by the Court *on a motion* made in a summary manner by any person interested, and any disobedience of any order of the Court made on such motion shall be deemed to be a contempt of the Court.

If it appear to the Court, on satisfactory evidence, that a composition *cannot*, in consequence of *legal difficulties* or for any sufficient cause, proceed without *injustice* or *undue delay*, the Court may adjudge the debtor a bankrupt.

(305.) *What is the effect of the failure of a debtor to comply with the provisions of a composition?*

It sets the creditor at liberty to pursue all his legal remedies for his original debt, that is to say, any provision may be enforced by the Court on motion made in a summary manner by any person interested; and any disobedience of the order of the Court made on such motion will be a contempt of Court; or in the event if the debtor does not pay or offer to pay the composition to any creditor in accordance with the resolution, the creditor will be entitled to sue him for the original debt, or he may apply to have the debtor adjudged a bankrupt. But the above is always subject to the jurisdiction of the Court of Bankruptcy to restrain such steps being taken upon equitable grounds according to all the circumstances of the case. (*Ex parte King, in re Harper*, L. R. 17 Eq. 332.)

(306.) *Has the Bankruptcy Act of* 1869 *made any and what difference in the practice of executing and registering deeds of composition or arrangement with creditors?*

Where it is desired to compound or arrange with creditors, as in the case of an assignment of all the assignor's property to trustees for the benefit of his creditors, no deed is now executed, as formerly was the case, but the proper course is to file a petition for liquidation, by arrangement or composition with creditors, and then proceed under sections 125, 126, and 127 of the new Act, and the general rules applicable to cases under those sections.

(307.) *How far is the debtor liable on a composition deed for debts incurred by fraud?*

By sect. 15 of the Debtors Act of 1869 (32 & 33 Vict. c. 62), where a debtor makes any arrangement or composition with his creditors under the Bankruptcy Act of 1869 he shall *remain liable for the unpaid balance* of any debt which he incurred, or increased, or whereof before the date of the arrangement or composition he obtained forbearance *by fraud*, provided that the defrauded creditor has not consented to the arrangement otherwise than by proving his debt and accepting dividends.

(308.) *Is there any, and, if so, what, difference in the position of an execution creditor, in cases of a debtor liquidating by arrangement or by composition?*

In the case of a liquidation by arrangement, the rights of the execution creditor are as before stated; and in the case of a liquidation by composition, the rights of the execution creditor to the goods are not affected by the liquidation. See *ex parte Birmingham Gas Company, re Adams*, L. R. 11 Eq. 204; *ex parte Sheriff of Middlesex, re England*, L. R. 12 Eq. 207.

XIII.—Punishment of Fraudulent Debtors.

(309.) *By the provisions of the "Debtors Act,* 1869," *a bankrupt may render himself liable to the criminal law; of what*

offences would he be deemed guilty? and what punishment may be awarded him?

Misdemeanor and felony.

By sect. 12 in cases of felony and in some misdemeanors, viz., those set out in sect. 11, the punishment by the Act is imprisonment for any time not exceeding two years with or without hard labour, and in the other cases of misdemeanors, those referred to in sect. 13, not exceeding one year with or without hard labour.

(310.) *State shortly some of the cases which would render him so liable?*

(i.) Not, to the best of his knowledge and belief, fully and truly discovering to the trustee administering his estate all his property, &c., unless the jury is satisfied he had no intention to defraud.

(ii.) After the presentation of a bankruptcy petition against him, &c., or within four months next before the same, concealing any part of his property to the value of 10*l.* or upwards, unless, &c.

(iii.) Making any material omission in any statement relating to his affairs, unless, &c. In all the above cases the punishment is two years, with or without hard labour (s. 11).

Absconding after the presentation of a bankruptcy petition against him, &c., or within four months before such presentation, &c., quitting England, and taking with him, or attempting, &c., so to do, any part of his property to the amount of 20*l.* or upwards, which ought by law to be divided amongst his creditors, unless the going, &c., is by sect. 12 made a felony, and punishable by imprisonment for any term not exceeding two years with or without hard labour.

By sect. 13, if any person in incurring any debt or liability has obtained credit under false pretences, or by means of any

other fraud, he is to be deemed guilty of a misdemeanor, and punishable by imprisonment for any term not exceeding one year with or without hard labour.

(311.) *State some of the principal cases of misconduct in which a bankrupt will be deemed guilty of a misdemeanor, and state the punishment to which he becomes liable.*

(i.) Non-discovery of property and its dispositions with intent to defraud.

(ii.) Concealment of property to the value of 10*l.* or upwards, or of debts due to him, with fraudulent intent.

(iii.) Omission, with fraudulent intent, in any statement relating to his affairs.

(iv.) Attempting to account for property by fictitious losses.

The punishment in the above cases is imprisonment, with or without hard labour, for any time not exceeding two years.

(i.) Obtaining credit by false pretences, or by means of any other fraud.

(ii.) Making any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, wilfully and with intent to defraud.

In the two latter cases the punishment is one year's imprisonment, with or without hard labour.

(312.) *When is a creditor in any bankruptcy arrangement or composition to be guilty of a misdemeanor, and what punishment is he liable to?*

If he wilfully, and with intent to defraud, makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of a misdemeanor punishable with imprisonment not exceeding one year, with or without hard labour (s. 14, Debtors Act, 1869.)

(313.) *What are the principal acts of a bankrupt which constitute misdemeanors or felony?*

(i.) Not fully or truly discovering to his trustee all his property, and how, to whom, for what consideration, and when he disposed of any part thereof.

(ii.) Not delivering up to his trustee all such parts of his property as are in his custody or under his control.

(iii.) If he makes any material omission in any statement relating to his affairs, &c., &c.

The above are misdemeanors.

The following is a felony:

Absconding with property to the amount of 20*l.* or upwards, which ought by law to be divided amongst his creditors. Punishable by imprisonment for any term not exceeding two years, with or without hard labour.

(314.) *What ingredient is necessary to render non-discovery, concealment, or omission by the bankrupt a misdemeanor, and how and by whom is the culpability tried?*

The jury being satisfied that it was done with intent to defraud; he will be prosecuted by the trustee on the order of the Court, and the Quarter Sessions have jurisdiction in respect of an offence under this Act. (Debtors Act, s. 20.) See also *Rex* v. *Walters*, 5 C. & P. 138; Robson's Bankruptcy, 3rd ed. 606.

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